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SUPREME COURT U.S.

# **TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1957**

**No. 483**

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**LAWRENCE SPEISER, APPELLANT,**

*vs.*

**JUSTIN A. RANDALL, AS ASSESSOR OF CONTRA  
COSTA COUNTY, STATE OF CALIFORNIA**

---

**No. 484**

---

**DANIEL PRINCE, APPELLANT,**

*vs.*

**CITY AND COUNTY OF SAN FRANCISCO,  
A MUNICIPAL CORPORATION**

---

**APPEALS FROM THE SUPREME COURT OF THE  
STATE OF CALIFORNIA**

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**FILED SEPTEMBER 19, 1957  
PROBABLE JURISDICTION NOTED NOVEMBER 25, 1957**

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[fol. A] [File endorsement omitted]

[fol. 2]

**IN THE SUPREME COURT OF THE  
STATE OF CALIFORNIA**

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LAWRENCE SPEISER, Plaintiff and Respondent,

v.

JUSTIN A. RANDALL, as Assessor of the County of Contra  
Costa, State of California, Defendant and Appellant.

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CLERK'S TRANSCRIPT ON APPEAL—Filed June 22, 1955

From The Superior Court of Contra Costa County

Hon. Wakefield Taylor, Presiding, Hon. Harold Jacoby,  
Hon. Hugh H. Donoxan, Hon. Homer W. Patterson, Hon.  
Norman A. Gregg, *Sitting en Banc*.

*For Defendant and Appellant:*

Francis W. Collins, District Attorney, Contra Costa  
County, by: Thomas F. McBride, by: George W. McClure,  
Deputies Dist. Atty. and Associate, Hall of Records,  
Martinez, California.

*For Plaintiff and Respondent:*

Lawrence Speiser, In Propria Persona, 503 Market  
Street, San Francisco, California and Joseph Landisman,  
413 Tenth Street, Richmond, California.

[fol. 4] [File endorsement omitted]

IN SUPERIOR COURT OF CONTRA COSTA COUNTY  
 No. 60660 (Consolidated Cases)  
 No. 60661

NOTICE OF APPEAL—Filed May 2, 1955

*To the Clerk of the Above-Entitled Court, to Lawrence Speiser, Plaintiff, and to Joseph Landisman, His Attorney:*

You will please take notice that the defendants herein hereby appeal to the Supreme Court of the State of California from the judgment entered herein on March 9, 1955, in favor of plaintiff and against defendant and from all of said judgment.

Dated: May 2, 1955.

Respectfully submitted,

Francis W. Collins, District Attorney, Contra Costa County, California; Clifford C. Anglim, City Attorney of the City of El Cerrito, Contra Costa County, California, by: /s/ Thos. F. McBride, by: /s/ George W. McClure, Deputies Dist. Atty. and Associates.

[fol. 5] [File endorsement omitted]

IN SUPERIOR COURT OF CONTRA COSTA COUNTY  
 No. 60660 (Consolidated Cases)  
 No. 60661

NOTICE TO PREPARE RECORD ON APPEAL—Filed June 1, 1955

*To the Clerk of the Above-Entitled Court, to Lawrence Speiser, plaintiff and to Josephe (sic) Landisman, his attorney:*

You will please take notice that the defendants herein hereby designate the following named papers as their

record on appeal and hereby direct the Clerk of this court to prepare said record on appeal containing said papers:

- (1) Plaintiff's Complaint for declaratory relief
  - (2) Answer of defendants
  - (3) Stipulation by plaintiff and defendants
  - (4) Court's order of August 30, 1954, consolidating these cases and ordering a hearing en banc.
  - (5) Plaintiff's opening brief
  - (6) Reply brief of defendants.
  - (7) Plaintiff's reply brief
  - (8) Findings of fact and conclusions of law
  - (9) Judgment of the court
- [fol. 6] (10) Defendants' notice of appeal

Dated this 31st day of May, 1955.

Respectfully submitted,

Francis W. Collins, District Attorney, County of Contra Costa, State of California; Clifford C. Anglim, City Attorney of the City of El Cerrito, Contra Costa County, State of California, by /s/ Thos. F. McBride, Deputy District Attorney and Associate.

[fol. 7] [File endorsement omitted]

IN SUPERIOR COURT OF CONTRA COSTA COUNTY

No. 60660

COMPLAINT FOR DECLARATORY RELIEF—Filed May 27, 1954

Plaintiff complains of defendant and alleges:

1. That the plaintiff is a legal resident of the State of California residing in the City of El Cerrito and County of Contra Costa.

2. That the plaintiff and his wife own property not in excess of the value of \$5,000 nor less than \$1,000.

3. That on June 23, 1943, the plaintiff was inducted into the Army of the United States; that on December 22, 1944 plaintiff received an honorable discharge as an enlisted man; that on December 23, 1944 plaintiff received a commission as Second Lieutenant in the Air Corps and served in that capacity until January 19, 1946 when he received his Certificate of Service and was relieved from active duty as a 1st Lieutenant; that from June 12, 1945 to October 12, 1945 plaintiff served as a navigator with the 20th Air Force operating out of Saipan, the Mariana Islands, on combat bombing missions over Japan.

[fol. 8] 4. That pursuant to the provisions of Article XIII, Section 1 $\frac{1}{4}$  of the Constitution of California, plaintiff is entitled to the property tax exemption therein provided in the sum of \$1,000.00.

5. That heretofore, and for the fiscal or tax years of 1951-1952, 1952-1953 and 1953-1954 plaintiff applied for the aforesaid tax exemption and said applications were granted.

6. That on or about November 4, 1952, the Constitution of the State of California was amended to add a new section numbered Article XX, Section 19 which provides that no person who advocates the overthrow of the Government of the United States or the State by force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall receive any exemption from any tax imposed by the State or any other local subdivision thereof, and further authorizing the legislature to enact such laws as might be necessary to effectuate the provisions of the aforesaid section.

7. That on or about July 1, 1953, the legislature of the State of California enacted a law (Stats. 1953, Ch. 1503) adding Section 32 to the Revenue and Taxation Code of the State of California which provides that any claim for property tax exemption must contain a declaration that the person claiming such exemption does not advocate the overthrow of the Government of the United States or the State by force or violence or other

unlawful means, nor advocate the support of a foreign [fol. 9] government against the United States in the event of hostilities, and further providing that it be a felony to make such declaration knowing it to be false.

8. That defendant is, and was at all times mentioned in connection with plaintiff's application for tax exemption, the Assessor of the Contra Costa County, State of California.

9. That on or about March 31, 1954, plaintiff filed in the office of defendant in the City of Richmond, Contra Costa County, an application for property tax exemption for the fiscal or tax year 1954-1955 as required by law, which application disclosed that plaintiff was entitled to the property tax exemption afforded him as a veteran by the provisions of Article XIII, Section 1 $\frac{1}{4}$  of the Constitution (sic) of the State of California.

10. That the aforesaid application for property tax exemption was in all respects duly executed except that plaintiff struck out and did not subscribe to the declaration in the said application which contained the language set forth in the aforementioned Section 32 of the Revenue and Taxation Code.

11. That plaintiff declined to execute the aforesaid declaration in connection with his application for the said veteran's property tax exemption upon the grounds that the requirement that plaintiff execute such a declaration as a condition for tax exemption as a veteran violated his rights of conscience and privacy and abridged freedoms guaranteed by the Constitution of the United States and the State of California, more particularly set forth hereinafter.

[fol. 10] 12. That on April 27, 1954, defendant denied plaintiff's claim for the aforesaid property tax exemption upon the sole ground that the said application for veterans tax exemption did not contain the declaration as required by the aforesaid Section 32 of the Revenue and Taxation Code.



13. That Article XX, Section 19 of the Constitution of the State of California and Section 32 of the Revenue and Taxation Code of the State of California, on their face and as construed and applied to plaintiff, are unconstitutional and invalid upon the following grounds:

a. The said enactments violate the provisions of the First and Fourteenth Amendments to the Constitution of the United States in that they abridge plaintiff's freedoms of conscience, speech, press, assembly and the right to petition for redress of grievances and therefore deprive plaintiff of his liberty and property without due process of law.

b. The said enactments violate the provisions of the First and Fourteenth Amendments to the Constitution of the United States in the manner aforesaid in that by reason of the vagueness, uncertainty and ambiguity of the language contained in the said enactments, they constitute a prior restraint on the freedoms guaranteed by the First and Fourteenth Amendments and facilitate the discriminatory enforcement of the law and the penalizing of utterances, protected from governmental abridgment under the Constitution.

c. That said enactments violate the First and Four-[fol. 11]teenth Amendments to the Constitution of the United States in the manner aforesaid in that they abridge plaintiff's freedoms of speech, press, assembly and the right to petition for redress of grievances without any declaration, evidence or showing of the existence of a clear and present danger or clear and probable danger, or any danger at all.

d. The said enactments deprive plaintiff of his liberty and property without trial or hearing, accusation, confrontation, right to cross-examination or the assistance of counsel; subvert the presumption of innocence and alter the rules of evidence; and attain plaintiff by legislative fiat, all in violation of the due process clause of the Fourteenth Amendment and the provisions of Article I, Section 9, Clause 3 of the Constitution of the United States.



e. The said enactments violate the provisions of the First and Fourteenth Amendments in the manner aforesaid in that they require plaintiff to relinquish his freedoms of conscience, speech, press, assembly and the right to petition for redress of grievances as a condition for obtaining the aforesaid veterans property tax exemption granted to plaintiff by the Constitution of the State of California.

f. The said enactments violate the provisions of the Fourteenth Amendment in the manner aforesaid in that they deny to plaintiff the equal protection of the laws.

g. The said enactments violate the provisions of the Fourteenth Amendment in the manner aforesaid in that [fol. 12] they abridge plaintiff's immunities and privileges as a citizen of the United States.

h. The said enactments purport to regulate and restrict subject matter entirely within the cognizance and province of the federal government under the Constitution of the United States, and the Congress of the United States by legislative enactments has preempted and wholly occupied the field covered by the said enactments.

i. The said enactments deprive plaintiff of rights guaranteed to him by the Constitution of the State of California and violate the provisions thereof in the following respects: deprive plaintiff of his inalienable rights, Article I, Section 1; undermine the purpose of Government, Article I, Section 2; deprive plaintiff of his liberty of conscience, Article I, Section 4; deprive plaintiff of his liberty of speech and press, Article I, Section 9; deprive plaintiff of his right to assemble and petition, Article I, Section 10; are contrary to the requirements for uniform general laws, Article I, Section 11; deprive plaintiff of his liberty without due process of law, Article I, Section 13; constitute bills of attainder, Article I, Section 16; deprives plaintiff of his privileges and immunities, Article I, Section 21; violate the provision for separation of powers provided in the Constitution, Article III, Section 1; constitute special laws in violation of Article IV, section 25, paragraphs "Second", "Tenth", "Nineteenth"

and "Twentieth"; deprive plaintiff of his veterans property tax exemption, Article XX, Section 11¼.

[fol.13] j. Assembly Constitutional Amendment No. 1 enacted by the legislature of the State of California in 1950, which was submitted to the electorate and finally adopted as Article XX, Section 19, embraced more than one subject and therefore violated the provisions of Article IV, Section 24 of the Constitution of the State of California.

14. That a controversy has arisen and exists between plaintiff and defendant as aforesaid, which controversy the plaintiff seeks to have adjudicated and determined by this Court under the provisions of the Declaratory Judgment Act.

Wherefore plaintiff prays for judgment adjudicating and declaring that Article XX, Section 19 of the Constitution of the State of California and Section 32 of the Revenue and Taxation Code of the State of California are unconstitutional and invalid, on their face and as construed and applied to the plaintiff herein; that plaintiff is entitled to a property tax exemption for the fiscal or tax year 1954-1955 in the sum of \$1,000 pursuant to the provisions of Article XIII, Section 11¼ of the Constitution of the State of California; and that plaintiff have such other and further relief as shall be just and equitable in the premises, together with costs and disbursements herein.

/s/ Lawrence Speiser, /s/ Joseph Landisman, Attorneys for Plaintiff.

[fol.14] *Duly sworn to by Lawrence Speiser, jurat omitted in printing.*

[fol. 15] • [File endorsement omitted]

IN SUPERIOR COURT OF CONTRA COSTA COUNTY

No. 60660

ANSWER—Filed June 30, 1954

Comes now the defendant and for answer to the complaint on file herein admits, denies and alleges as follows, to wit:

I

The defendant having no information or belief on the subjects mentioned in Paragraphs 1, 2 and 3 of plaintiff's complaint sufficient to enable him to answer any of the allegations therein contained, and placing his denial on that ground, denies each and every allegation set forth in said Paragraphs 1, 2 and 3.

II

Answering the allegations contained in Paragraph 4 of plaintiff's complaint, defendant denies each and every, all and singular, the allegations in said paragraph contained.

III.

Answering the allegations contained in Paragraph 9 of plaintiff's complaint, beginning on Page 2, at line 30, to and including the end of said Paragraph 9, defendant denies each and every, all and singular, the allegations in said portion of said paragraph contained.

[fol. 16]

IV

Answering the allegations of Paragraph 11 of plaintiff's complaint, beginning on Page 3, Line 8, with the words "Upon the grounds", continuing down to and including the end of said paragraph, defendant denies each and every, all and singular, the allegations contained in said portion of said paragraph.

## V.

Answering the allegations contained in Paragraph 13 a, b, c, d, e, f, g, h, i, and j of plaintiff's complaint, defendant denies each and every, all and singular, the allegations in said paragraphs contained.

Wherefore, defendant prays for judgment adjudicating and declaring that Article XX, Section 19, of the Constitution of the State of California, and Section 32 of the Revenue and Taxation Code of the State of California, are constitutional and valid; that plaintiff is not entitled to a property tax exemption for the fiscal or tax year, 1954-1955, in any sum whatsoever, and for such other and further relief is (sic) is meet and proper in the premises, together with costs and disbursements incurred herein.

Dated this 30 day of June, 1954.

Justin A. Randall, as Assessor of the County of Contra Costa, State of California, by: Francis W. Collins, District Attorney of the County of Contra Costa, State of California, by: Thomas F. McBride, Assistant Attorney for Defendant.

[fol. 17]

[File endorsement omitted]

IN SUPERIOR COURT OF CONTRA COSTA COUNTY

No. 60660

No. 60661

(Consolidated Cases)

**Findings of Fact and Conclusions of Law—**

Filed March 8, 1955

The above-entitled cases having been consolidated pursuant to stipulation and order of the court came on regularly for trial and oral argument before the Superior Court of the County of Contra Costa, Honorable Wakefield Taylor, presiding, with the Honorable Harold Jacoby,

Hugh M. (sic) Donovan, Homer W. Patterson, and Norman A. Gregg sitting *en banc* without a jury on the 23rd day of December, 1954; Messrs. Lawrence Speiser, in propria persona and Joseph Landisman, appearing as counsel for the plaintiff, and Francis W. Collins, District Attorney of the County of Contra Costa, Thomas W. McBride, Assistant District Attorney of the County of Contra Costa and George W. McClure, Deputy District Attorney of the County of Contra Costa, appearing for defendant Justin A. Randall, as Assessor of the County of Contra Costa, and Clifford C. Anglim, City Attorney of the City of El Cerrito, appearing for defendant Mary-[fol. 18] ellen Foley, as Assessor of the City of El Cerrito.

The cases having been submitted to the Court on a written stipulation of facts and on written briefs and oral argument, and the Court being fully advised in the premises, finds: it is true:

## FINDINGS OF FACT

### I.

That the plaintiff is a legal resident of the State of California residing in the City of El Cerrito and County of Contra Costa.

### II.

That the plaintiff and his wife own property not in excess of the value of \$5,000 nor less than \$1,000.

### III.

That the plaintiff is an honorably discharged veteran of the United States Army Air Force, after service in World War II, and by reason of such service is entitled to the property tax exemption, pursuant to the provisions of Article XIII, Section 1 $\frac{1}{4}$ , of the Constitution of the State of California.

### IV.

That on or about November 4, 1952, the Constitution of the State of California was amended to add a new

section numbered Article XX, Section 19, which provides as follows:

"Notwithstanding any other provision of this Constitution, no person or organization which advocates the overthrow of the Government of the United States [fol. 19] or the State by force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall:

"(b) Receive any exemption from any tax imposed by this State or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State.

"The Legislature shall enact such laws as may be necessary to enforce the provisions of this section."

## V.

That on or about July 1, 1953, the Legislature of the State of California enacted a law (Stats. 1953, Ch. 1503) adding Section 32 to the Revenue and Taxation Code of the State of California, which provides as follows:

"Any statement, return, or other document in which is claimed any exemption, other than the householder's exemption, from any property tax imposed by this State or any county, city or county, city district, political subdivision, authority, board, bureau, commission or other public agency of this State shall contain a declaration that the person or organization making the statement, return, or other document does not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means nor ad-[fol. 20] vocate the support of a foreign government against the United States in event of hostilities. If any such statement, return, or other document does not contain such a declaration, the person or organization making such statement, return, or other document shall not receive any exemption from the tax



to which the statement, return, or other document pertains. Any person or organization who makes such declaration knowing it to be false is guilty of a felony. This section shall be construed so as to effectuate the purpose of Section 19 of Article XX of the Constitution."

## VI.

That the defendant, Justin A. Randall, is, and was at all times mentioned in connection with plaintiff's application for tax exemption, the Assessor of the County of Contra Costa, State of California; and that the defendant, Maryellen Foley, is, and was at all times mentioned in connection with plaintiff's application for tax exemption, the Assessor of the City of El Cerrito, County of Contra Costa, State of California.

## VII.

That on or about March 31, 1954, the plaintiff filed in the office of defendant Randall in the City of Richmond and defendant Foley in the City of El Cerrito, both in Contra Costa County, applications for property tax exemption for the fiscal or tax year 1954-1955 as required by law, which applications disclosed that plaintiff was entitled to the property tax exemption afforded him as [fol. 21] a veteran by the provisions of Article XIII, Section 1 $\frac{1}{4}$ , of the Constitution of the State of California.

## VIII.

That the aforesaid applications for property tax exemption were in all respects duly executed except that plaintiff struck out and did not subscribe to the declarations in the said applications which contained the language set forth in the aforementioned Section 32 of the Revenue and Taxation Code, to wit: "that the applicant did not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means nor advocate the support of a foreign government against the United States in the event of hostilities."

## IX.

That on April 21, 1954, defendant Foley denied plaintiff's claim for the aforesaid property tax exemption and on April 27, 1954, defendant Randall denied plaintiff's claim for property tax exemption, both denials being upon the sole ground that the said applications for veteran's property tax exemption did not contain the declaration required by the aforesaid Section 32 of the Revenue and Taxation Code.

## X.

That the aforestated portion of Section 19, Article XX of the Constitution of the State of California and Revenue and Taxation Code Section 32, on their faces, and as construed and applied are null and void and violate the 1st and 14th Amendments to the United States Constitution in infringing on freedom of speech.

[fol. 22]

## XI.

That said Section 19, Article XX of the Constitution of the State of California and Revenue and Taxation Code Section 32 violate the 1st Amendment and the due process and equal protection clauses of the 14th Amendment of the United States Constitution in requiring those who advocate doctrines unacceptable to the majority of citizens of the State to pay a larger tax than those who refrain from expressing such doctrines.

## XII.

That said Section 19, Article XX of the Constitution of the State of California and Revenue and Taxation Code Section 32 violate the due process clause of the 14th Amendment of the United States Constitution in not reasonably tending to avert any clear and present danger to the state.

## XIII.

That Revenue and Taxation Code Section 32 is further null and void and unconstitutional in creating an unreasonable classification and is being discriminatory legisla-



tion in requiring declarations of non-advocacy only from claimants for property tax exemptions and thus violates the equal protection clause of the 14th Amendment of the United States Constitution and Article I, Section 21 & Article IV, Section 25, subdivisions (sic) 10, 19, 20 and 33 of the Constitution of the State of California.

From the foregoing facts, the court concludes:

#### CONCLUSIONS OF LAW

1) That the aforestated portion of Section 19, Article [fol. 23] XX of the Constitution of the State of California and Revenue and Taxation Code Section 32, on their faces, and as construed and applied are null and void and violate the 1st and 14th Amendments to the United States Constitution in infringing on freedom of speech.

2) That said Section 19, Article XX of the Constitution of the State of California and Revenue and Taxation Code Section 32 violate the 1st Amendment and the due process and equal protection clauses of the 14th Amendment of the United States Constitution in requiring those who advocate doctrines unacceptable to the majority of citizens of the State to pay a larger tax than those who refrain from expressing such doctrines.

3) That said Section 19, Article XX of the Constitution of the State of California and Revenue and Taxation Code Section 32 violate the due process clause of the 14th Amendment of the United States Constitution in not reasonably tending to avert any clear and present danger to the state.

4) That Revenue and Taxation Code Section 32 is further null and void and unconstitutional in creating an unreasonable classification and in being discriminatory legislation in requiring declarations of non-advocacy only from claimants for property tax exemptions and thus violates the equal protection clause of the 14th Amendment of the United States Constitution and Article I, Section 21, and Article IV, Section 25, subdivisions 10, 19, 20 and 33 of the Constitution of the State of California.

5) That plaintiff is entitled to a veteran's property [fol. 24] tax exemption for the fiscal or tax year 1954-1955 in the sum of \$1000 pursuant to the provisions of Article XIII, Section 1 $\frac{1}{4}$  of the Constitution of the State of California.

6) That plaintiff is entitled to judgment against the defendants and to his costs as against defendants.

Let Judgment Be Entered Accordingly.

Dated: March 1st, 1955.

~~February~~ O.K.

H.J.

/s/ Harold Jacoby, /s/ Hugh H. Donovan,  
/s/ Homer W. Patterson, /s/ Norman A. Gregg;  
/s/ Wakefield Taylor, Judges of the Superior  
Court of the County of Contra Costa, *En Banc*.

[fol. 25]

[File endorsement omitted]

IN SUPERIOR COURT OF CONTRA COSTA COUNTY

No. 60660

No. 60661

(Consolidated Cases)

JUDGMENT—March 1, 1955

The above-entitled cases having been consolidated pursuant to stipulation and order of the court came on regularly for trial and oral argument before the Superior Court of the County of Contra Costa, Honorable Wakefield Taylor, presiding, with the Honorable Harold Jacoby, Hugh M. (sic) Donovan, Homer W. Patterson, and Norman A. Gregg sitting *en banc* without a jury on the 23rd day of December, 1954; Messrs. Lawrence Speiser, in propria persona and Joseph Landisman, appearing as counsel for the plaintiff, and Francis W. Collins, District Attorney of the County of Contra Costa, Thomas W. McBride, Assistant District Attorney of the County of Contra Costa and George W. McClure, Deputy District Attorney of the County of Contra Costa, appearing for

defendant Justin A. Randall, as Assessor of the County of Contra Costa, and Clifford C. Anglim, City Attorney of the City of El Cerrito, appearing for defendant Maryellen Foley, as Assessor of the City of El Cerrito.

And it appearing to the court that findings of fact and [fol. 26] conclusions of law have been signed and filed herein, this court enters its judgment as follows:

It Is Ordered, Adjudged and Decreed:

1. That Article XX, Section 19 of the Constitution of the State of California is unconstitutional and invalid on its face and as construed and applied to the plaintiff.

2. That Section 32 of the Revenue and Taxation Code is unconstitutional and invalid, on its face and as construed and as applied to the plaintiff.

3. That plaintiff be granted a veteran's property tax exemption from the taxes of the County of Contra Costa and the City of El Cerrito for the fiscal or tax year 1954-1955 in the sum of \$1000 pursuant to the provisions of Article XIII, Section 11 $\frac{1}{4}$  of the Constitution of the State of California.

4. That plaintiff has judgment against said defendants, Justin A. Randall, as Assessor of the County of Contra Costa, and Maryellen Foley, as Assessor of the City of El Cerrito, and for his costs herein incurred.

March O.K. H.J.

Dated: This 1st day of February, 1955.

/s/ Harold Jacoby, /s/ Hugh H. Donovan,  
/s/ Homer W. Patterson, /s/ Norman A. Gregg,  
/s/ Wakefield Taylor, Judges of the Superior  
Court.

[fol. 27] Endorsed:

Entered March 9, 1955

GB

Judgment Book 89, Page 265

W. T. Paasch, County Clerk

By Gladys Brooks, Deputy

[fol. 28]

[File endorsement omitted]

## IN SUPERIOR COURT OF CONTRA COSTA COUNTY

No. 60660

STIPULATION—Filed August 30, 1954

It Is Hereby Stipulated by and between the respective parties hereto that:

1. The case of Lawrence Speiser vs. Maryellen Foley, as Assessor of the City of El Cerrito, Contra Costa County, Superior Court Action No. 60661, may be consolidated with the above entitled action for trial and argument.

2. That the plaintiff is a legal resident of the State of California residing in the City of El Cerrito and County of Contra Costa.

3. That the plaintiff and his wife own property not in excess of the value of \$5,000 nor less than \$1,000.

4. That the plaintiff is an honorable discharged veteran of the United States Army Air Force, after service in World War II, and by reason of such service is entitled to the property tax exemption, pursuant to the provisions of Article XIII, Section 11 $\frac{1}{4}$ , of the Constitution of the State of California.

5. That on or about November 4, 1952, the Constitution [fol. 29] of the State of California was amended to add a new section numbered Article XX, Section 19, which provides that no person who advocates the overthrow of the Government of the United States or of the State by the force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall receive any exemption from any tax imposed by the State or any other local subdivision thereof, and further authorizing the legislature to enact such laws as might be necessary to effectuate the provisions of the aforesaid section.

6. That on or about July 1, 1953, the legislature of the State of California enacted a law (Stats. 1953, Ch. 1503)

adding Section 32 to the Revenue and Taxation Code of the State of California which provides that any claim for property tax exemption must contain a declaration that the person claiming such exemption does not advocate the overthrow of the Government of the United States or of the State by force or violence or other unlawful means, nor advocate the support of a foreign government against the United States in the event of hostilities, and further providing that it be a felony to make such declaration knowing it to be false.

7. That the defendant, Justin A. Randall, is, and was at all times mentioned in connection with plaintiff's application for tax exemption, the Assessor of the County of Contra Costa, State of California; and that the defendant, Maryellen Foley, is, and was at all times mentioned [fol. 30] in connection with plaintiff's application for tax exemption, the Assessor of the City of El Cerrito, County of Contra Costa, State of California.

8. That on or about March 31, 1954, the plaintiff filed in the office of defendant Randall in the City of Richmond and defendant Foley in the City of El Cerrito, both in Contra Costa County, applications for property tax exemption for the fiscal or tax year 1954-1955 as required by law, which applications disclosed that plaintiff was entitled to the property tax exemption afforded him as a veteran by the provisions of Article XIII, Section 11 $\frac{1}{4}$ , of the Constitution of the State of California.

9. That the aforesaid applications for property tax exemption were in all respects duly executed except that plaintiff struck out and did not subscribe to the declarations in the said applications which contained the language set forth in the aforementioned Section 32 of the Revenue and Taxation Code, to wit, "that the applicant did not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means nor advocate the support of a foreign government against the United States in the event of hostilities."

10. That on April 21, 1954, defendant Foley denied plaintiff's claim for the aforesaid property tax exemption and on April 27, 1954, defendant Randall denied plaintiff's claim for property tax exemption, both denials being upon the sole ground that the said applications for veterans property tax exemption did not contain the declaration required by the aforesaid Section 32 of the Revenue [fol. 31] and Taxation Code.

11. That after this stipulation has been entered into and filed, the plaintiff shall serve and file his opening brief, consisting of one original and five copies, within 20 days with the Superior Court. Thereafter defendant shall serve and file defendant's brief within 20 days after filing of plaintiff's opening brief. Thereafter, plaintiff may have 10 days in which to serve and file a reply brief after the filing of defendant's brief. By stipulation the parties may extend each of such periods for not more than 20 days, and thereafter the time may be extended only by the Presiding Judge of the Superior Court.

12. After the filing of the briefs, the cases shall be set for oral argument at the earliest possible mutually agreeable time.

Dated: July 16, 1954.

Lawrence Speiser, Joseph Landisman, Attorneys for Plaintiff.

August 10, 1954.

Francis W. Collins, District Attorney, by Thomas F. McBride, Asst., Attorney for Defendant, Justin A. Randall.

Clifford Anglim, Attorney for Defendant, Maryellen Foley.



[fol. 32] [File endorsement omitted]

IN SUPERIOR COURT OF CONTRA COSTA COUNTY

No. 60660

No. 60661

(Consolidated Cases)

ORDER CONSOLIDATING CASES—August 30, 1954

Pursuant to Stipulation on file herein, entered into by and between the parties hereto, by and through their attorneys respectively,

It Is Hereby Ordered that actions number 60661 and 60660 be and are hereby consolidated for trial and argument.

Pursuant to Stipulation on file herein,

It Is Further Ordered that in the above entitled actions plaintiff shall serve and file an opening brief within twenty (20) days from date of filing this Order; thereafter defendant shall serve and file a reply brief within twenty (20) days after the filing of plaintiff's opening brief; thereafter plaintiff may have ten (10) days in which to serve and file a reply brief.

It Is Further Ordered that after the filing of all briefs the cases shall be set for oral argument at a time set by the Court before the entire Court sitting en banc.

[fol. 33] Done in open court this 30 day of August, 1954.

Wakefield Taylor, Judge of the Superior Court.

Copy of the foregoing Order received this 30th day of August, 1954

Francis W. Collins, District Attorney, by Thomas F. McBride, Assistant.

[fol. 34] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 35]      [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA  
IN BANK

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S.F. 19322

LAWRENCE SPEISER, Plaintiff and Respondent,

v.

JUSTIN A. RANDALL, as Assessor of Contra Costa County,  
Defendant and Appellant.

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S.F. 19323

LAWRENCE SPEISER, Plaintiff and Respondent,

v.

MARY ELLEN FOLEY, as Assessor of City of El Cerrito,  
Defendant and Appellant.

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OPINION—Entered April 24, 1957

This is an appeal by the defendants from a single judgment in two consolidated cases in which the common plaintiff, Lawrence Speiser, sought declaratory relief against the Assessors of the County of Contra Costa and the City of El Cerrito located in that county to the effect that section 19 of article XX of the Constitution and section 32 of the [fol. 36] Revenue and Taxation Code are invalid and that he is entitled to the veterans' property tax exemption provided for in section 1-1/4 of article XIII of the Constitution notwithstanding the provisions of those enactments.

The material facts in these two cases are the same and appear by stipulation of the parties in the trial court. The plaintiff is a resident of the City of El Cerrito and the County of Contra Costa. He meets all of the requirements for the veterans' tax exemption except that in his application for the tax year 1954-1955 he failed and refused to subscribe to the nonsubversive oath contained in the appli-



cation form supplied by the assessors pursuant to article XX, section 19 of the Constitution and section 32 of the Revenue and Taxation Code. His applications were rejected. He thereupon commenced these actions for declaratory relief. The trial court held that the constitutional provisions and the code section were invalid as an infringement upon the right of free speech guaranteed by the federal Constitution, and that section 32 was invalid for the reason that in failing to require an oath from the members of all groups otherwise entitled to tax exemptions an unreasonable classification was imposed. The judgment ordered that the plaintiff be granted the exemption.

The contentions urged on appeal in these cases are the same as those presented in *Prince v. City and County of [fol. 37] San Francisco*, ante, p. —. For reasons stated in the opinions in that case and in *The First Unitarian Church of Los Angeles v. County of Los Angeles*, ante, p. —, the defendants should have prevailed.

The judgment is reversed.

Shenk, J.

We Concur: Schauer, J., Spence, J., McComb, J.

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[fol. 38]

#### DISSENTING OPINION

For the reasons stated in my dissenting opinion in *First Unitarian Church v. County of Los Angeles*, ante p. —, I would affirm the judgment.

Traynor, J.

I Concur: Gibson, C.J.

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[fol. 39]

#### DISSENTING OPINION

For the reasons stated in my dissenting opinion in *First Unitarian Church of Los Angeles v. County of Los Angeles*, ante p. —, I would affirm the judgment.

Carter, J.

[fol. 40] [File endorsement omitted]

IN SUPREME COURT OF THE STATE OF CALIFORNIA  
No. S.F. 19322

LAWRENCE SPEISER, Appellant,

v.

JUSTIN A. RANDALL, as Assessor of Contra Costa County,  
Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE  
UNITED STATES—Filed May 27, 1957

I

Notice Is Hereby Given that Lawrence Speiser, the appellant above named hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of California reversing the judgment of the trial court entered in this action on April 24, 1957.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

II

The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the United States Supreme Court and include in said transcript:

1. Opinion of the Supreme Court of California;
2. Clerk's Transcript of the record before the Supreme Court of California;
3. This Notice of Appeal;

III

The following questions are presented by this appeal:

- [fol. 41] 1. Whether Section 19, Article 20 of the Constitution of the State of California, which denies

any tax exemption to advocates of the overthrow of the government of the United States by force, violence, or unlawful means and to advocates of the support of a foreign government against the United States in the event of hostilities, and Section 32 of the Revenue and Taxation Code of California which requires all applicants (organizational or individual) for property tax exemptions (with the exception of applicants for the householders exemption) to sign a declaration that they do not advocate the proscribed doctrines, on their faces and as construed and as applied, are unconstitutional in violating the due process clause of the Fourteenth Amendment and through it, the First Amendment to the United States Constitution in abridging freedom of speech and assembly in the following manner and respects:

- a) In infringing on these freedoms while bearing no reasonable relationship to the evil sought to be controlled by the enactments nor any reasonable relationship to the public welfare;
  - b) In infringing on these freedoms without any showing of a clear and present danger existing by reason of the receipt of tax exemptions by advocates of the proscribed doctrines or those who, for reason of conscience, refuse to sign a declaration that they do not advocate the proscribed doctrines;
  - c) In abridging (sic) these freedoms by imposing a prior restraint in that the language of the acts are vague and uncertain in their terms.
2. Whether the aforestated enactments, as written, construed and applied, deprive the appellant of his liberty and property without trial or hearing, accusation, confrontation, right to confrontation, right to cross-[fol. 42] examination, or the assistance of counsel; subvert the presumption of innocence and alter the rules of evidence and attain the appellant by legislative fiat, all in violation of the due process clause of the Fourteenth Amendment and the provision of Article I, Section 9, Clause 3 of the Constitution of the United States.

3. Whether the said enactments as written, construed and as applied are unconstitutional in violating the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution in imposing an unconstitutional condition upon the enjoyment of a privilege in requiring relinquishment of the right to freedom of speech and assembly as a condition for receiving a tax exemption.
4. Whether the said enactments, as written, construed and applied, violate the equal protection clause of the Fourteenth Amendment to the United States Constitution in discriminatorily denying tax exemptions to the appellant while granting them to all others in similar circumstances.
5. Whether the said enactments violate the privileges and immunities clause of the Fourteenth Amendment of the United States Constitution.
6. Whether the said enactments, as written, construed and applied, violate the equal protection clause of the Fourteenth Amendment to the United States Constitution in unreasonably and discriminatorily requiring a declaration of non-advocacy of the proscribed doctrines only for certain property tax exemptions and the corporate income tax exemptions but not for the householders and all other tax exemptions.
7. Whether the said enactments, as written, construed and as applied, regulate and restrict sedition, a subject-matter entirely within the cognizance and province of the federal government, under the Constitution [fol. 43] of the United States and which the Congress of the United States, by legislative enactments, has preempted and wholly occupied the field.

Dated this 24th day of May, 1957.

/s/ Lawrence Speiser, Appellant, Attorney at Law,  
in Propria Persona, c/o American Civil Liberties  
Union of Northern California, 503 Market Street,  
Room 702, San Francisco 5, California.

[fol. 44] AFFIDAVIT OF SERVICE (omitted in printing).

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[fol. 45] Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 46] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA  
SF 19450

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DANIEL PRINCE, Plaintiff and Appellant,

v.

CITY AND COUNTY OF SAN FRANCISCO, a municipal  
corporation, Defendant and Respondent.

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CLERK'S TRANSCRIPT—Filed January 16, 1956

On Appeal from Judgment of the Superior Court  
of the State of California, in and for the  
City and County of San Francisco

Honorable William T. Sweigert, Judge

For Appellant:

Lawrence Speiser, Staff Counsel, American Civil Liberties Union of Northern California, 503 Market Street, San Francisco 5, California, and Ralph Wertheimer 625 Market Street, San Francisco 5, California.

For Respondent:

Dion R. Holm, City Attorney, Walker Peddicord, Chief Deputy City Attorney, Robert M. Desky, Deputy City Attorney; 206 City Hall, San Francisco 2, California.

[fol. 49]

[File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND  
FOR THE CITY AND COUNTY OF SAN FRANCISCO

No. 440,302

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DANIEL PRINCE, Plaintiff,

v.

CITY AND COUNTY OF SAN FRANCISCO, a municipal  
corporation, Defendant.

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COMPLAINT FOR RECOVERY OF TAXES PAID UNDER PROTEST—  
Filed July 28, 1954

Plaintiff complains of defendant and alleges:

1. That the plaintiff is now and was at all times mentioned herein, a legal resident of the State of California residing in the City and County of San Francisco, State of California.

2. That defendant, City and County of San Francisco, is now and was at all times herein mentioned a body politic and corporate of and within the State of California and a duly organized and existing city and county of and within said state under and pursuant to the laws of said state.

The defendant, City and County of San Francisco, is now and was at all times mentioned a municipal corporation duly organized and existing under the laws of the state of California, having organized under a Freeholders' Charter under and pursuant to the Constitution and laws of said state.

3. That plaintiff is now and was at all times herein mentioned, the sole owner of a business known as General [fol. 50] Containers. That the situs of said business is at 1301 Harrison Street, in the City and County of San Francisco, State of California. That plaintiff is now and at all times mentioned herein, the owner of the unsecured per-

sonal property, consisting of tangible personal property and solvent credits, located at the situs of said business. That in particular, plaintiff was the owner of said personal property on noon of the first Monday in March, 1954, to wit: March 1, 1954.

4. That neither plaintiff nor his wife own property in excess of \$5000.00.

5. That on November 2, 1942, the plaintiff entered service in the Army of the United States; that on January 26, 1946, plaintiff received an honorable discharge from the Army of the United States with the rating of Technical Sergeant; that during the plaintiff's service in the Army, he served in the Chemical Warfare Section in Africa, Sicily, Europe and the Aleutian Islands.

6. That by reason of said service and pursuant to the provisions of Article XIII, Section 1 $\frac{1}{4}$  of the Constitution of California, plaintiff is entitled to the property tax exemption therein provided up to the amount of \$1000.00.

7. That heretofore, and for the fiscal or tax years of 1951-1952, 1952-1953 and 1953-1954, plaintiff applied for the aforesaid tax exemption and said applications were granted.

8. That on or about November 4, 1952, the Constitution of the State of California was amended to add a new [fol. 51] section numbered Article XX Section 19 which provides that no person who advocates the overthrow of the Government of the United States or the State by force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall receive any exemption from any tax imposed by the State or any other local subdivision thereof, and further authorizing the legislature to enact such laws as might be necessary to effectuate the provisions of the aforesaid section.

9. That on or about July 1, 1953, the legislature of the State of California enacted a law (Stats. 1953, Ch. 1503) adding Section 32 to the Revenue and Taxation Code of the State of California which provides that any claim



for property tax exemption must contain a declaration that the person claiming such exemption does not advocate the overthrow of the Government of the United States or the State by force or violence or other unlawful means, nor advocate the support of a foreign government against the United States in event of hostilities, and further proving that it be a felony to make such declaration knowing it to be false.

10. That on or about April 12, 1954, plaintiff filed in the office of Russell L. Wolden, the Assessor of the City and County of San Francisco, State of California, an application for property tax exemption for the fiscal or tax year 1954-1955 as required by law, which application disclosed that plaintiff was entitled to the property tax exemption afforded him as a veteran by the provisions [fol. 52] of Article XIII, Section 1 $\frac{1}{4}$  of the Constitution of the State of California.

11. That the aforesaid application for property tax exemption was in all respects duly executed except that plaintiff struck out and did not subscribe to the declaration in the said application which contained the language set forth in the aforementioned Section 32 of the Revenue and Taxation Code.

12. That plaintiff declined to execute the aforesaid declaration in connection with his application for the said veteran's property tax exemption upon the grounds that the requirement that plaintiff execute such a declaration as a condition for tax exemption as a veteran is null and void in violating both the United States and California Constitutions as is more particularly set forth hereinafter.

13. That on April 15, 1954, defendant notified plaintiff that plaintiff's claim for the aforesaid property tax exemption was denied upon the sole ground that the said application for the veteran's tax exemption did not contain the declaration as required by the aforesaid Section 32 of the Revenue and Taxation Code.

14. That subsequent thereto, in the year 1954, the Assessor of said City and County of San Francisco,



assessed for taxes for said year, all of the property aforesaid, to wit: the unsecured personal property herein above described; that said assessment and valuation upon the unsecured assessment roll for said fiscal year 1954-1955, is as follows:

[fol. 53] Total Tangible Unsecured Property ....	\$850.00
Solvent Credits .....	\$450.00

That thereafter there was levied by the public officials of said City and County of San Francisco a tax upon and against said property upon the basis of the tax rate, last fixed before the lien date for the taxes to be collected. That said tax rate was \$6.27 per \$100 assessed valuation upon the total tangible unsecured personal property and at the rate of \$.10 per \$100 valuation of solvent credits. That said tax levied against said property totaled \$53.75 consisting of \$53.30 levied at the rate of \$6.27 per \$100 assessed valuation on the tangible personal property of assessed valuation of \$850.00 and \$.45 levied at the rate of \$.10 per \$100 valuation on the solvent credits of assessed valuation of \$450.00. That the Assessor of said City and County of San Francisco demanded of plaintiff that plaintiff pay all of said tax, that said tax was entered upon the unsecured assessment rolls of said City and County of San Francisco for the fiscal year 1954-1955 as a tax and lien upon and against said personal property.

15. That thereupon on the 16th day of July 1954, plaintiff, who claimed that said assessment was void to the extent that said personal property would be exempt from taxation under the plaintiff's veteran's exemption, paid the entire tax in the amount of \$53.75 under protest to said Assessor. That said protest was in writing and specified that portion of said assessment and tax, which would have [fol. 54] been exempt under plaintiff's veteran's exemption was claimed to be void, to wit: \$1000.00 consisting of tangible personal property valued at \$850 and taxes at \$53.30 and \$150.00 of solvent credits, taxed at \$.15, leaving a total tax bill owing of \$.30. That said protest set forth the grounds upon which said claim was founded and that a copy of said protest is hereby attached, marked Exhibit "A" and is hereby referred to and made a part hereof as

though fully set forth. That the above setforth portion of said assessment was and is void for each and all of the reasons set forth in said protest as the grounds upon which plaintiff claimed in said protest the assessment was void.

16. That said assessment so levied and imposed upon said property of said plaintiff to the extent it would have been exempt under the plaintiff's veterans property exemption, is null and void. That the purported requirements of Section 19 of Article XX of the Constitution of the State of California (hereinafter referred to as the Constitutional Amendment) and Section 32 of the Revenue and Taxation (sic) (hereinafter referred to as the Oath Requirement or Oath Declaration or Loyalty Oath) on their faces and as construed and applied to the plaintiff are unconstitutional, null and void on the following grounds.

a. They violate the First and Fourteenth Amendments of the United States Constitution in abridging freedom of speech, assembly and religion without a showing of a clear and present danger.

(1) The First Amendment Freedoms can only be [fol. 55] suppressed or penalized if their exercise presents a clear and present danger.

(2) No clear and present substantive danger has been shown to exist by the granting of tax exemptions to advocates of these proscribed doctrines.

(3) They act as a prior restraint on the First Amendment freedoms in being vague and uncertain in their terms.

b. They further violate the due process clause of the Fourteenth Amendment in that they bear no reasonable relationship to the public welfare.

c. They deprive plaintiff of equal protection of the law in violation of the Fourteenth Amendment in denying him an exemption granted to all others in similar circumstances.

d. They impose an unconstitutional condition upon the enjoyment of a privilege in violation of the equal protection and due process clause of the United States Constitution's Fourteenth Amendment in requiring plaintiff to relinquish his freedoms of speech, press, assembly and religion as a condition for obtaining the veteran's property tax exemption granted to plaintiff by the Constitution of the State of California.

e. They are bills of attainder in violation of the provisions of Article I, Section 9, Clause 3 of the United States Constitution.

f. The said enactments violate the provisions of the [fol. 56] Fourteenth Amendment in the manner aforesaid in that they abridge plaintiff's immunities and privileges as a citizen of the United States.

g. Assembly Constitutional Amendment No. 1 enacted by the legislature of the State of California in 1950, which was submitted to the electorate and finally adopted as Article XX, Section 19, embraced more than one subject and therefore violated the provisions (sic) of Article IV, Section 24 of the Constitution of the State of California.

h. The Oath Requirement of Section 32 of the Revenue and Taxation Code, as written and as applied, violates the Constitution of the State of California in the following provisions thereof and in the following respects: it deprives plaintiff of his inalienable rights, Article I, Section 1; it deprives plaintiff of his liberty of conscience, Article I Section 4; it deprives plaintiff of his liberty of speech and press, Article I, Section 9; it deprives plaintiff of his right to assemble and petition, Article I, Section 10; it deprives plaintiff of his liberty and property without due process of law, Article I, Section 13; it deprives plaintiff of equal protection of the law without any reasonable basis for classification, Article I, Section 11, and 21; it constitutes a special law in violation of Article IV, Section 25, subdivisions 10, 19, 20, and 33.

i. Section 32 of the Revenue and Taxation Code further violates the California Constitution in making an unper- [fol. 57] mitted exception from the mandate of Section

19, Article XX in exempting householders from the loyalty oath requirement.

Wherefore plaintiff prays judgment against said defendants for the sum of \$53.45 together with interest from the 16th day of July, 1954 at 5% interest per annum and costs of suit; that this court adjudge and decree that said denial of plaintiff's veterans tax exemption was void, illegal, and unconstitutional and plaintiff prays for such other and further relief in the premises as may be proper and for general relief.

Dated: July 27 1954.

/s/ Lawrence Speiser, Staff Counsel American Civil Liberties Union of Northern California, 503 Market Street, San Francisco 5, California.

/s/ Ralph Wertheimer, 625 Market Street, San Francisco, California.  
Attorneys for Plaintiff

[fol. 58] *Duly sworn to by Daniel Prince, jurat omitted in printing.*

[fol. 59] EXHIBIT "A" (1) TO COMPLAINT

1301 Harrison Street  
San Francisco 3, Calif.  
July 16, 1954

Mr. Russell L. Wolden, Assessor  
City and County of San Francisco  
City Hall  
San Francisco, California

Attention: Mr. Kripp

Dear Sir:

Please take notice that the undersigned protests the payment of the personal property taxes assessed to him which would be exempt from taxation under the undersigned's veteran's exemption.

The undersigned is a veteran of World War II and has made a timely and proper application for a veteran's exemption. He and his wife own property valued at less than \$1,000. He is qualified in every respect for a veteran's exemption under Article XIII, Section 1½ of the California Constitution.

In his application, the undersigned struck out the loyalty oath required by Article XX of the California Constitution and Revenue & Taxation Code Section 32 on the grounds that such a requirement violates the United States and California Constitutions.

The denial of the veteran's exemption to the undersigned is null and void; and the taxes assessed to the undersigned, which would be otherwise exempt, have been illegally assessed and levied for the following reasons:

1) The Constitutional Amendment and the Oath Requirement [fol. 60] ment on their faces and as applied violate the First and Fourteenth Amendment of the United States Constitution in abridging freedom of speech and assembly without a showing of a clear and present danger.

2) The Constitutional Amendment and the Oath Requirement violate the due process clause of the 14th Amendment of the United States Constitution in that they bear no reasonable relation to the public welfare.

3) They impose an unconstitutional condition upon the enjoyment of a privilege, in violation of the equal protection and due process clauses of the 14th Amendment.

4) The Constitutional Amendment is null and void because it embraces more than one subject.

5) The loyalty oath violates many provisions of the Constitution of the State of California.

Sincerely,

Daniel Prince

[fol. 61]      EXHIBIT "A" (2) TO COMPLAINT

1301 Harrison Street  
San Francisco 3, Calif.  
July 23, 1954

Mr. Russell L. Wolden, Assessor  
City and County of San Francisco  
City Hall  
San Francisco, California

Attention: Mr. Kripp

Dear Sir:

I would like to append this letter to my letter of protest, mailed to you on July 16, 1954, in connection with my payment of taxes assessed to me on my unsecured personal property, by reason of the denial of the veteran's exemption to me by the Assessor's Office.

I would like to point out the typographical error appearing in the last sentence of the second paragraph. I am, of course, referring to the veteran's exemption under Article XIII, Section 1-1/4 of the California Constitution, and not Section 1-1/2 as there appears.

In addition, in case my letter of protest does not clearly set forth my protest, I am protesting that the portion of the assessment which would have been exempt under any veteran's exemption.

My total tangible personal property was assessed at \$850.00 and under the tax rate of \$6.27 per \$100.00 valuation, the tax on this property was \$53.30. My solvent credits were assessed at a valuation of \$450.00 at a tax rate of \$ .10 [fol. 62] per \$100.00 of valuation for a tax of \$ .45. Under my veteran's exemption, I would have been granted an exemption on \$1,000 of property so that my personal property valued at \$850.00 and a portion of the solvent credits of \$150.00 would have been tax exempt. Thus, if I had been granted my veteran's property exemption, I would have had a tax bill of \$ .30 based on the \$300.00 of solvent credits above the \$1,000 exemption and at the tax rate of \$ .10 per \$100.00 valuation.

Sincerely,

Daniel Prince



[fol. 63]

[File endorsement omitted]

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR  
THE CITY AND COUNTY OF SAN FRANCISCO

ANSWER—Filed October 8, 1954

Comes now the defendant City and County of San Francisco, a municipal corporation, and answering the complaint of plaintiff on file herein, admits, denies and alleges as follows:

I

States that it has no information or belief upon the subject, sufficient to enable it to answer any of the allegations contained in paragraph 1 of said complaint and basing its denial on that ground, this defendant denies each and every, all and singular, generally and specifically, the allegations contained in said paragraph 1.

II

Admits each and every, all and singular, generally and specifically, the allegations contained in paragraph 2 of said complaint.

III

States that it has no information or belief upon the subject, sufficient to enable it to answer any of the allegations contained in paragraph 3 of said complaint and basing its denial on that ground, this defendant denies each and every, all and singular, generally and specifically, the allegations contained in said paragraph 3.

IV

[fol. 64] States that it has no information or belief upon the subject, sufficient to enable it to answer any of the allegations contained in paragraph 4 of said complaint and basing its denial on that ground, this defendant denies each and every, all and singular, generally and specifically, the allegations contained in said paragraph 4.

## V

States that it has no information or belief upon the subject, sufficient to enable it to answer any of the allegations contained in paragraph 5 of said complaint and basing its denial on that ground, this defendant denies each and every, all and singular, generally and specifically, the allegations contained in said paragraph 5.

## VI

Denies each and every, all and singular, generally and specifically, the allegations contained in paragraph 6 of said complaint.

## VII

Admits that heretofore, and for the fiscal or tax years of 1952-1953 and 1953-1954, plaintiff applied for the aforesaid tax exemption and said applications were granted;

Further answering the allegations of said paragraph 7, of said complaint, this answering defendant denies each and every, all and singular, generally and specifically the allegations of said paragraph 7 except as herein specifically admitted.

[fol. 65]

## VIII

Admits each and every, all and singular, generally and specifically, the allegations contained in paragraph 8 of said complaint.

## IX

Admits each and every, all and singular, generally and specifically, the allegations contained in paragraph 9 of said complaint.

## X

Admits that on or about April 12, 1954, plaintiff filed in the office of Russell L. Wolden, the Assessor of the City and County of San Francisco, an application for property tax exemption for the fiscal or tax year 1954-1955 upon a form, a copy of which is attached hereto as defendant's Exhibit "A"; denies that the application was in the form

required by law and further denies that plaintiff was entitled to the property tax exemption afforded him as a veteran, by the provisions of Article XIII, Section 1 $\frac{1}{4}$  of the Constitution of the State of California, or otherwise, or at all.

## XI

Admits each and every, all and singular, generally and specifically, the allegations contained in paragraph 11 of said complaint.

## XII

Admits each and every, all and singular, generally and specifically, the allegations contained in paragraph 12 of [fol. 66] said complaint; alleges further that the grounds cited and relied upon by plaintiff are legal conclusions that are incorrect, unsound and unfounded in law.

## XIII

Admits that on April 15, 1954, defendant, acting by and through its assessor, Russell L. Wolden, notified plaintiff in a letter in answer to his letter of April 12, 1954 that the granting of veteran's exemptions is covered by State Law and cited and quoted to him therein the provisions of Section 32 of the Revenue and Taxation Code of the State of California;

Further answering the allegations of said paragraph 13 of said complaint, this answering defendant denies each and every, all and singular, generally and specifically the allegations of said paragraph 13 except as herein specifically admitted.

## XIV

Admits each and every, all and singular, generally and specifically, the allegations contained in paragraph 14 of said complaint.

## XV

Denies that it was the 16th day of July, 1954 when plaintiff paid the stated tax under protest and alleges, further,

that the copy of the protest referred to, marked Exhibit "A" is not a true copy in that it bears the date of July 16, 1954, an inaccurate date; alleges, further, that the plaintiff paid the stated tax under protest on the 6th day of July, 1954 and [fol. 67] that the protest referred to was dated July 8, 1954 and filed with the Assessor upon July 6, 1954, at the same time and place as the stated tax was paid;

Further answering the allegations of said paragraph 15 of said complaint, this answering defendant denies each and every, all and singular, generally and specifically the allegations of said paragraph 15 except as herein specifically admitted and denied.

## XVI

Denies each and every, all and singular, generally and specifically, the allegations contained in paragraph 16 of said complaint; alleges, further, that the matters asserted in this paragraph, and all of them, are legal conclusions that are incorrect, unsound and unfounded in law.

As and for a Further, Separate and Distinct Affirmative Defense to the Complaint, defendant alleges that the said complaint does not state facts sufficient to constitute a cause of action.

As and for a Second Further, Separate and Distinct Affirmative Defense to the Complaint, defendant alleges that plaintiff did not complete his application for exemption in conformity with Section 32 of the Revenue and Taxation Code, in that he did not make the requisite declaration that he does not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means nor advocate the support [fol. 68] of a foreign government against the United States in the event of hostilities.

As and for a Third Further, Separate and Distinct Affirmative Defense to the Complaint, defendant alleges that the grounds set forth in the protest of plaintiff, and amendments thereto, to the assessment and levy complained of are, and each of them is, insufficient in law to allow recovery of the tax paid thereunder, or any part thereof; defendant further alleges that it properly retains for its own use and

benefit according to law the tax so paid, and the whole thereof.

As and for a Fourth Further, Separate and Distinct Affirmative Defense to the Complaint, defendant alleges that plaintiff has no standing to raise the issue whether Section 32 of the Revenue and Taxation Code violates the California Constitution in making an allegedly unpermitted exception from the mandate of Section 19, Article XX in exempting the householder's exemption from the loyalty oath requirement for the reason that plaintiff has not himself been nor is he a member of a class in any way, manner or degree injured by any such exception; defendant further denies that said exception is unpermitted, improper or otherwise unconstitutional.

Wherefore, defendant City and County of San Francisco prays that the plaintiff Daniel Prince take nothing by his complaint on file herein, that said defendant have judgment for its costs of suit herein incurred, and for such other and further relief as to the Court may seem proper.

Dated: October 8, 1954.

/s/ Dion R. Holm, City Attorney; /s/ Robert M. Desky, Deputy City Attorney; Attorneys for Defendant.

[fol. 70]

[File endorsement omitted]

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR  
CITY AND COUNTY OF SAN FRANCISCO

STIPULATION—Filed December 3, 1954

It Is Hereby Stipulated by and between the respective parties hereto that:

1. That the plaintiff was and is a legal resident of the State of California, residing in the City and County of San Francisco, State of California, during all times pertinent to this suit.

2. That defendant, City and County of San Francisco, is now and was at all times herein mentioned a body politic and corporate of and within the State of California and a duly organized and existing city and county of and within said state under and pursuant to the laws of said state under and pursuant to the laws of said state. (sic)

The defendant, City and County of San Francisco, is now and was at all times mentioned herein a municipal corporation duly organized and existing under the laws of the state of California, having organized under a Freeholder's Charter under and pursuant to the Constitution and laws of said state.

3. That plaintiff is now and was at all times herein mentioned, the sole owner of a business known as General Containers. That the situs of said business is at 1301 Harrison Street, in the City and County of San Francisco, State of [fol. 71] California. That plaintiff is now and at all times mentioned herein, the owner of the unsecured personal property, consisting of tangible personal property and solvent credits, located at the situs of said business. That in particular, plaintiff was the owner of said personal property at noon of the first Monday in March, 1954, to wit: March 1, 1954.

4. That neither plaintiff nor his wife own property in excess of \$5000.00.

5. That the plaintiff is an honorably discharged veteran of the United States Army after service in World War II,



and fulfills all of the qualifications for property tax exemption set forth in Article XIII, Section 1 $\frac{1}{4}$  of the Constitution of the State of California.

6. That heretofore, and for the fiscal or tax years of 1952-1953 and 1953-1954, plaintiff applied for the aforesaid tax exemption and said applications were granted.

7. That on or about November 4, 1952, the Constitution of the State of California was amended to add a new section numbered Article XX, Section 19, which provides as follows:

"Notwithstanding any other provision of this Constitution, no person or organization which advocates the overthrow of the Government of the United States or the State by force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall:

[fol. 72] "(a) Hold any office or employment under this State, including but not limited to the University of California, or with any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State; or

"(b) Receive any exemption from any tax imposed by this State or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State . . ."

8. That on or about July 1, 1953, the Legislature of the State of California enacted a law (Stats. 1953, Ch. 1503) adding Section 32 to the Revenue and Taxation Code of the State of California, which provides as follows:

"Any statement, return, or other document in which is claimed any exemption, other than the householder's exemption, from any property tax imposed by this State or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State shall contain a declaration that the person or organization making the statement, return, or other document does not ad-

vocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means nor advocate the support of [fol. 73] a foreign government against the United States in event of hostilities. If any such statement, return, or other document does not contain such a declaration, the person or organization making such statement, return, or other document shall not receive any exemption from the tax to which the statement, return, or other document pertains.

"Any person or organization who makes such declaration knowing it to be false is guilty of a felony. This section shall be construed so as to effectuate the purpose of Section 19 of Article XX of the Constitution."

9. That on or about April 12, 1954, plaintiff filed in the office of Russell L. Wolden, the Assessor of the City and County of San Francisco, State of California, an application for veteran's property tax exemption for the fiscal or tax-year 1954-1955 as required by law.

10. That the aforesaid applications for veteran's property tax exemption was in all respects duly executed and would have entitled plaintiff to the exemption sought except that plaintiff struck out and did not subscribe to the declaration in the said application which contained the language set forth in the aforementioned Section 32 of the Revenue and Taxation Code, to wit:

"That the applicant did not advocate the overthrow of the Government of the United States or of the State [fol. 74] of California by force or violence or other unlawful means nor advocate the support of a foreign government against the United States in the event of hostilities."

11. That plaintiff declined to execute the aforesaid declaration in connection with his application for the said veteran's property tax exemption upon the grounds that the requirement that plaintiff execute such a declaration as a condition for tax exemption as a veteran is null and

void in violating both the United States and California Constitutions.

12. That on April 15, 1954, by and through Assessor Wolden, defendant notified plaintiff that plaintiff's claim for the aforesaid property tax exemption was denied upon the sole ground that the said application for the veteran's tax exemption did not contain the declaration as required by the aforesaid Section 32 of the Revenue and Taxation Code.

13. That subsequent thereto, in the year 1954, the Assessor of said City and County of San Francisco, assessed for taxes for said year all of the property aforesaid, to wit: the unsecured personal property herein above described; that said assessment and valuation upon the unsecured assessment roll for said fiscal year 1954-1955, is as follows:

Total Tangible Unsecured Property .....	\$850.00
Solvent Credits .....	\$450.00

That thereafter there was levied by the public officials of said City and County of San Francisco a tax upon and [fol. 75] against said property upon the basis of the tax rate, last fixed before the lien date for the taxes to be collected. That said tax rate was \$6.27 per \$100 assessed valuation upon the total tangible unsecured personal property and at the rate of \$ .10 per \$100 valuation of solvent credits. That said tax levied against said property totaled \$53.75 consisting of \$53.30 levied at the rate of \$6.27 per \$100 assessed valuation on the tangible personal property of assessed valuation of \$850.00 and \$ .45 levied at the rate of \$ .10 per \$100 valuation on the solvent credits of assessed valuation of \$450.00. That the Assessor of said City and County of San Francisco demanded of plaintiff that plaintiff pay all of said tax, that said tax was entered upon the unsecured assessment rolls of said City and County of San Francisco for the fiscal year 1954-1955 as a tax and lien upon and against said personal property.

14. That thereupon on the 6th day of July 1954, plaintiff, who claimed that said assessment was void to the extent that said personal property would be exempt from taxation

under the plaintiff's veterans exemption, paid the entire tax in the amount of \$53.75 under protest to said Assessor. That said protest was in writing and specified that portion of said assessment and tax, which would have been exempt under plaintiff's veteran's exemption was claimed to be void, to wit: \$1000.00 consisting of tangible personal property valued at \$850 and taxes at \$53.30 and \$150.00 of solvent [fol. 76] credits, taxed at \$ .15, leaving a total tax bill owing of \$ .30. That said protest set forth the grounds upon which said claim was founded in which plaintiff contends that taxes assessed to the plaintiff by reason of his striking out the aforesaid declaration have been illegally assessed and levied, and plaintiff bases this contention on the grounds that Article XX of the California Constitution and the declaration required by Revenue and Taxation Code Section 32 are null and void in violating the United States and California Constitutions, as written and as applied.

15. That after this stipulation has been entered into and filed, the plaintiff shall serve and file his opening brief, within 20 days with the Superior Court. Thereafter defendant shall serve and file defendant's brief within 20 days after filing of plaintiff's opening brief. Thereafter, plaintiff may have 10 days in which to serve and file a reply brief after the filing of defendant's brief. By stipulation the parties may extend each of such periods for not more than 20 days, and thereafter the time may be extended only by a Judge of the Superior Court.

16. After the filing of the briefs, the cases shall be set for oral argument at the earliest possible mutually agreeable [fol. 77] time.

Dated: December 3, 1954.

/s/ Lawrence Speiser, /s/ Ralph Wertheimer, Attorneys for Plaintiff.

/s/ Dion R. Holm, /s/ Robert M. Desky, Attorneys for Defendants.

[fol. 78] [File endorsement omitted]

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR  
THE CITY AND COUNTY OF SAN FRANCISCO

MEMORANDUM OPINION AND DECISION—July 25, 1955

Section 19, Article XX of our State Constitution, adopted by vote of the people in November, 1952, provides that no person who advocates the overthrow of the government of the United States, or of this state, by force or violence or other unlawful means, or who advocates the support of a foreign government against the United States in time of hostilities, shall hold any office or employment in this state or receive any exemption from any tax, either state or local. The section directs the legislature to enact such laws as may be necessary to enforce these provisions.

Under this constitutional mandate, the legislature, in 1953, enacted Section 32 of the Revenue and Taxation Code, which provides that in any statement or return in which is claimed any exemption, other than the householder's exemption, from any property tax, shall contain a declaration to the effect that the person making the statement or return does not come within the class to which exemptions are denied by the constitution.

This case arises out of the application of these provisions to a veteran's claim for the \$1,000 property tax exemption granted to veterans by the State Constitution (Art. XIII, Sec. 1 $\frac{1}{4}$ ).

[fol. 79] Two conditions of eligibility for this veteran's exemption have been in the constitution from the beginning of the program many years ago: one, the requirement that the applicant shall have received an honorable discharge, and, second, the requirement that the applicant be possessed of property of a value less than \$5,000. The effect of the 1952 constitutional amendment here in question is to add a third condition to eligibility.

The plaintiff, a veteran otherwise qualified, refused to make the required declaration, was denied the exemption, paid his full property tax under protest, and in this action sues for the return of an alleged overpayment.

If the constitutional restriction is otherwise valid, the requirement of an oath from the veteran as a means of establishing eligibility is appropriate and lawful. (*Chesney v. Byram*, 15 Cal. 2d, 460.) Plaintiff, however, contends that these provisions of our state law violate the First and Fourteenth amendments of the Constitution of the United States in respect to freedom of speech; also the Fourteenth Amendment in respect to due process and equal protection of the laws, and in that they constitute a bill of attainder.

It is hardly necessary to observe that we are here concerned, not with the political, sociological or moralistic arguments pro and con concerning oath requirements, nor with the debatable practical value of such requirements, but only with the legal aspects of a situation presented [fol. 80] because the people and the legislature have resolved and foreclosed debate by their enactment (sic) of the requirement into the law.

Statutory requirements for declarations similar in principle to those here involved, and often considerably broader, have been upheld during recent years by the Supreme Court of the United States and the courts of this and other states.

They have been upheld as applied to:

Federal employees (*Bailey v. Richardson*, 341 US 918 (1950));

State employees (*Pockman v. Leonard*, 39 Cal. 2d 676 (1952));

County employees (*Steiner v. Darby*, 88 Cal. App. 2d 481 (1948));

Municipal employees (*Garner v. Bd. Pub. Wks.*, 341 US 716 (1951), affirming *Garner v. Bd. Pub. Wks.*, 98 Cal. App. 2d 493 (1950));

Public school teachers (*Adler v. Bd. of Ed.*, 342 US 485 (1952); see also, *Steinmetz v. Bd. etc.*, Cal. Supreme Ct., 7/5/55);

Labor union officials (*American Comm. Assoc. v. Douds*, 339 US 382 (1950));

Candidates for public office (*Gerende v. Bd. of Supervisors*, 341 US 56 (1951); *Shub v. Simpson*, 76 Atl. 2d 332 (Md. 1950));



Political parties (*Communist Party v. Peek*, 20 Cal. 2d 536 (1942); *Field v. Hall*, 143 S.W. 2d 567 (Ark. 1940);

Applicants for admission to the bar (*Re: Summers*, 325 US (1944); see also, *Cohen v. Wright*, 22 Cal. 293);

Voters (*Opinion of the Justices*, 40 So. 2d 849 (Ala. 1949); see also *Rison v. Farr*, 87 Am. Dec. 52 (Ark.); *Davis v. Beason*, 133 US 333);

[fol. 81] Applicants for state unemployment benefits (*Dworken v. Collopy*, 91 NE 2d 564 (Ohio 1950); *State v. Hamilton*, 110 NE 2d 37);

Re employees in essential industries (See *Lockheed v. Sup. Ct.*, 28 Cal. 2d 481; *Black v. Cutter Lab.*, 43 Cal. 2d 788 (1955);

Applicants for public housing (*Peters v. N.Y. Housing*, 128 NYS 2d 112 (N.Y. 1954; *Rudder v. U.S.* (Mun. Ct. App., D.C., 105 A. 2d 741 (1954). (See: C.C.A. 7-21-55).

Most of the relatively few authorities invalidating such declaration requirements will be found to have turned upon the point that the particular declaration was ambiguous in respect to scienter, or in some respect distinguishable from the declaration here involved. (See *Wieman v. Updegraff*, 344 US 183; *US v. Schneider*, 45 Fed. Supp. 840; *Chicago Housing v. Blackman*, 122 NE 2d 522 (1954), or upon the ground that other statutory oath requirements were exclusive. (See *Tolman v. Underhill*, 103 Cal. App. 2d 195 (superceded (sic) in 39 Cal. 2d 708); *Imbrie v. Marsh*, 71 A. 2d 35 (N.J. 1950).

Only two minority cases are sufficiently in point to require comment for the purpose of distinguishing them from the situation involved in the pending case. These two cases, (*Danskin v. San Diego Unified School Dist.*, 28 Cal. 2d 536 (1946) and the recent case of *Lawson v. Housing Authority*, 70 NW 2d 605, will be hereafter noted.

This overwhelming weight of authority upholding these [fol. 82] declaration requirements is invariably rested upon the established principle that government, having an inherent right to protect itself from subversion by force,

violence or other unlawful means, can take such legislative action as is reasonably designed to prevent the eventual success of such subversive conduct. Upon this principle both our federal and state governments have enacted laws making advocacy of governmental overthrow by force and violence a criminal offense and punishable as such. (Criminal Syndicalism Act of California, constitutionality affirmed in *Whitney v. Calif.*, 274 U.S. 357; *People v. Steelik*, 187 Cal. 361; The federal Smith Act, 54 U.S. Stat. 670; Chap. 439 (18 USC Sec. 2385), constitutionality affirmed in *Dennis v. U. S.*, 341 US 494 (1951).

• In its most recent decision, *Dennis v. U. S.*, supra, the United States Supreme Court, reviewing its own earlier decisions in this field of law, has considered the origin, development and meaning of the "clear and present danger" rule in the light of realities occurring during recent years within and beyond our borders, and has concluded that this rule requires only that the court in each case determine "whether the gravity of the evil, discounted by its improbability, justifies any speech abridgment necessarily involved in the legislation before it."

In the *Dennis* case, involving prosecution of Communist defendants under the Smith Act, the court specifically held that it was proper for the trial judge (Judge Medina) to [fol. 83] instruct the jury that if the defendants in fact advocated governmental overthrow by force and violence, not in the sense of mere abstract doctrine, but in the sense of active advocacy, then, as a matter of law, there was danger sufficiently clear and present to justify application of the statute, notwithstanding the freedom of speech provisions of the First amendment of the federal constitution.

Article XX, Section 19, of the California Constitution and Revenue and Taxation Code Section 32, involved in the pending case, impose a restriction upon the veteran's exemption which is couched in terms almost identical with the Smith Act, and, as in the *Dennis* case, the restriction must be construed to mean advocacy of government overthrow by force and violence, not in the sense of mere discussion or mere abstract belief or opinion, but as a matter of active advocacy equivalent to potential conduct. The present legislation is not complicated by provisions con-



1954

OFFICE OF RUSSELL L. WOLDEN, ASSESSOR, CITY AND COUNTY OF SAN FRANCISCO  
PROPERTY STATEMENT AND CLAIM FOR VETERAN EXEMPTION  
STATEMENT OF PROPERTY OWNED, POSSESSED OR CONTROLLED AS OF MARCH 1, 1954

District	Card Transd by
----------	-------------------

1.	
2.	
3.	
4.	

(Business Name)	(Names of Partners)
(Name of Applicant)	(Wife's Former Name)
RESIDENCE ON MARCH 1, 1954	APT. NO. PHONE NO.
PLACE OF BUSINESS NO.	ROOM NO. TYPE

EVIDENCE PRESENTED	DISCHARGE REASON	BRANCH OF SERVICE	SERIAL NUMBER	SERVICE DATES	FORM NO.	APPROVED BY
--------------------	------------------	-------------------	---------------	---------------	----------	-------------

REAL ESTATE OWNED INSIDE CITY AND COUNTY OF SAN FRANCISCO								
ASSESSED TO	ADDRESS OR DESCRIPTION	CHOICE	VOL.	BLOCK	LOT	REAL EST.	IMPR.	V. E. APPLIED
1.								
2.								
3.								

TANGIBLE PERSONAL PROPERTY	Assessed Value	For Office Use Only	REAL ESTATE OR P. P. OWNED OUTSIDE S. F.
HOUSEHOLD No. Rms. Value			COUNTY STATE
LESS: HOUSEHOLD EXEMPTION			
HOTEL-APARTMENTS-RENTED ROOMS			

TANGIBLE PERSONAL PROPERTY	Assessed Value	For Office Use Only	REAL ESTATE OR P. P. OWNED OUTSIDE S. F.
HOUSEHOLD No. Rms. Value			COUNTY STATE
LESS: HOUSEHOLD EXEMPTION			DEED RECORDED TO
HOTEL-APARTMENTS-RENTED ROOMS			DESCRIPTION
No. Rooms No. Apts.			
MERCHANDISE AND SUPPLIES			
GDS. IN WHSE-AT			
Consigned Goods			
Equipment: Store-Office-Factory			
MONEY ON HAND (Not Savings or Checking)			
BOATS			
OTHER P. P.			
TOTAL			
LESS: VETERAN EXEMPTION			
TOTAL TANGIBLE PERSONAL PROPERTY			
@ \$6.27 per \$100.00 Assessed Value			
INTANGIBLE PERSONAL PROPERTY			
MONEY IN COM'L BANKS			
DEBTS DUE ME (Acct's Rec.)			
TOTAL			
LESS DEBTS OWED (No Notes)			
NET SOLVENT CREDITS			
LESS: BALANCE VETERANS EXEMPTION			
NET TAXABLE SOLVENT CREDITS			
@ 10c per \$100.00 Value			
1950 1951 1952 1953			
TOTAL			

COPY

TOTAL					
LESS DEBTS OWED (No Notes)					
NET SOLVENT CREDITS					
LESS: BALANCE VETERANS EXEMPTION					
NET TAXABLE SOLVENT CREDITS					
@ 10c per \$100.00 Value					
1950 1951 1952 1953					
TOTAL TAX					
Compared By	Warehouse	TOTAL V. E. GRANTED			
Appraiser's Certification	Extensions Checked	Property-Outside S. F.			
Corrected By	Approved By	Personal Property-S. F.			
		Real Estate-S. F.			

STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO }  
AFFIDAVIT AND CLAIM FOR EXEMPTION  
I, the undersigned, hereby swear or affirm that this statement and claim is made in good faith, and is to the best of my knowledge and belief true, correct, and complete and such statement includes all property owned, possessed or controlled by me at 12 o'clock noon, on Monday, March 1, 1954, and I do further claim that I am a legal resident of the State of California, that I do not own nor does my wife own, property, either taxable or non-taxable, anywhere, of the value of \$5,000 or more, and that I am eligible for exemption provided by Section 1 1/4 of Article XIII of the State Constitution because of the service described herein.  
I do not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means; nor advocate the support of a foreign government against the United States in event of hostilities.

Subscribed and sworn to before me this	day of	1954.	VETERAN OR LEGAL SPOUSE
RUSSELL L. WOLDEN, Assessor.	By	Deputy	



City Attorney, appearing through Walker Peddicord, Esq., Chief Deputy City Attorney, and Robert M. Desky, Esq., Deputy City Attorney, appearing for the defendant; and the matter having been submitted on a Stipulation of Facts, filed with the Court on December 3, 1954, and briefs having been filed and the cause having been orally argued on June 1, 1955, and documentary evidence, including legislative materials, having been introduced, and the cause submitted for decision, and a Memorandum Opinion and Decision having been filed herein on July 25, 1955, and Findings of Fact having been waived in and by the Stipulation of Facts herein submitted, and Conclusions of Law having been filed herein, the Court ordered the following judgment:

It Is Hereby Ordered, Adjudged and Decreed that plaintiff recover nothing from defendant in this action.

It Is Hereby Further Ordered, Adjudged and Decreed that plaintiff is entitled to no relief in this action.

It Is Hereby Further Ordered, Adjudged and Decreed [fol. 96] that defendant recover from plaintiff its costs of suit incurred in this action, pursuant to law.

Dated: July 28th, 1955.

/s/ W. T. Sweigert, Judge of the Superior Court.

Memo of costs

\$6.50. filed

7-28-55

[fol. 97]

[File endorsement omitted]

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR  
THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE OF ENTRY OF JUDGMENT—Filed July 28, 1955

To: Plaintiff above named and to Lawrence Speiser and  
Ralph Wertheimer, his attorneys.

You and Each of You Will Please Take Notice that the  
above court heretofore made and entered its judgment in

# For Office Use Only

1953

fol. 69C1

TANGIBLE PERSONAL PROPERTY		Assessed Value			
HOUSEHOLD No. Rms. _____ Value _____					
LESS: HOUSEHOLD EXEMPTION					
HOTEL—APARTMENTS—RENTED ROOMS					
No. Rooms _____ No. Apts. _____					
MERCHANDISE AND SUPPLIES					
GDSEAL WHSE.—AT					
Consigned Goods					
FIXTURES—OFFICE EQUIP.—MACHINERY					
MONEY ON HAND (Not Savings or Checking Acct's)					
BOATS					
OTHER P. P.					
TOTAL					
LESS: VETERAN EXEMPTION					
TOTAL TANGIBLE PERSONAL PROPERTY					
@ \$5.67 per \$100.00 Assessed Value					
INTANGIBLE PERSONAL PROPERTY					
MONEY IN COM'L BANKS					
DEBTS DUE ME (Acct's Rec.)					
TOTAL					
LESS DEBTS OWED (BY ME)					
NET SOLVENT CREDITS					
LESS: BALANCE VETERAN EXEMPTION					
NET TAXABLE SOLVENT CREDITS					

LESS DEBTS OWED (BY ME)					
NET SOLVENT CREDITS					
LESS: BALANCE VETERAN EXEMPTION					
NET TAXABLE SOLVENT CREDITS					
@ 10c per \$100.00 Value					

TOTAL V.E. GRANTED 1953	
	Property—Outside S. F.
	Personal Property—S. F.
	Real Estate—S. F.

Remarks:.....

63  
favor of defendant City and County of San Francisco, a municipal corporation, and against the plaintiff Daniel Prince.

Dated: July 28, 1955.

/s/ Dion R. Holm, City Attorney, /s/ Robert M. Desky, Deputy City Attorney, Attorneys for Defendant, City and County of San Francisco.

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[fol. 98] [File endorsement omitted]

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR  
THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE OF APPEAL—Filed September 26, 1955

To the Clerk of the Above-Entitled Court:

You will please take notice that the plaintiff herein hereby appeals to the Supreme Court of the State of California from the judgment entered herein on July 28, 1955, in favor of defendant and against plaintiff from all of said judgment.

Dated: September 26, 1955.

Respectfully submitted

Lawrence Speiser and Ralph Wertheimer, by /s/  
Lawrence Speiser, Attorneys for Plaintiff.

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[fol. 99] [File endorsement omitted]

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR  
THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE TO CLERK TO PREPARE CLERK'S TRANSCRIPT AND  
DESIGNATION OF RECORD ON APPEAL—Filed October 6, 1955

To the Clerk of the Above-Entitled Court, and to Defendant and Its Attorney:

You will please take notice that the plaintiff has appealed in the above-entitled case, and hereby requests the prepara-



are necessarily involved in active, personal advocacy of subversion.

In *Lawson v. Housing Authority*, 70 NW 2d 605, a recent Wisconsin decision invalidating an oath requirement extending to membership in various alleged subversive organizations, the court took the view that occupancy of a housing project by such a person was not a threat to the successful operation of the project. In the pending case, however, we are of the opinion that allotment of veterans' bounties to persons actively advocating subversion and treason would be destructive of the unique [fol. 90] purposes of a veterans' program.

Nor can it be fairly argued that legislation of this type is the result of some present day hysterical resort to novel restrictions upon personal liberty.

Aside from the recent decisions of the Supreme Court of the United States and of our own state, it should be noted that in 1863 our state Supreme Court, in *Cohen v. Wright* (22 Cal. 293) cited supra, held that a statutory requirement for a similar loyalty oath as a condition to the use of the courts, not only by attorneys but by litigants as well, was constitutional and valid in all respects. In 1889 the Supreme Court of the United States considered legislation similar in principle, and in *Davis v. Beason*, 133 US 333, 346, opinion written by Justice Field, it upheld a statute of the Idaho Territorial Legislature (which was subject to constitutional limitations) requiring that, as a condition to the exercise of the right to vote, registrants must subscribe to an oath to the effect that they did not practice, counsel or advocate bigamy or polygamy. The court held that the legislation was not subject to any legal or constitutional objection.

All of the other constitutional objections raised by plaintiff herein, e.g., due process, equal protection, bill of attainder, vagueness and uncertainty have been so consistently and clearly resolved against him in the numerous cases heretofore cited that no further discussion as to those objections is necessary.

[fol. 91] The further contention that Rev. & Tax. Code Section 32 is invalid for the reason that it applies in its terms only to property taxes (except householder's ex-

tion of clerk's transcript on appeal, which shall contain the following:

1. The judgment roll.
2. The written opinion of the Superior Court.
3. The Notice of Appeal.
4. The within notice to prepare the clerk's transcript.

No request is made for the inclusion as part of the clerk's transcript any of the briefs filed in this action in the Superior Court.

Respectfully submitted,

Dated: October 5, 1955.

Lawrence Speiser and Ralph Wertheimer, by /s/  
Lawrence Speiser, Attorneys for Plaintiff.

[fol. 100] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 102] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA  
IN BANK

S.F. 19450

DANIEL PRINCE, Plaintiff and Appellant,

v.

CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation,  
Defendant and Respondent.

OPINION—Filed April 24, 1957

This is an appeal by the plaintiff from a judgment in favor of the defendant in an action to recover taxes paid under protest and for declaratory relief.

cerning mere "beliefs" or mere "membership" in organizations. It applies only to personal advocacy.

In the light of the *Dennis* case, the point presented in the pending case is, not whether such active advocacy presents such a "clear and present danger" as to justify its proscription, but, rather, how far a legislature (or, as in this case, an electorate) may go, beyond direct criminal proscription of such advocacy, in an attempt to prevent or frustrate its success.

That mere direct criminal proscription is not the limit [fol. 84] of permissible legislation is demonstrated by the authorities above cited, which uphold legislation requiring various loyalty declarations as a condition to certain public employments and certain political activities. However, such legislation is not necessarily limited to placing restrictions upon public employments and political activities. If a legislature finds that in fact other situations exist wherein such subversive advances will occur unless similar restrictions are imposed it should have the power to impose them. The ruling principle is the test, rather than any particular factual situation, and the rule, and the reasons therefor, are broad enough to comprise situations other than public employments and political activities.

This brings us to the question whether entitlement to a veteran's exemption presents such a situation. In our approach to this question we may assume that there may be many situations wherein, although a possibility of subversive mischief exists, the evil must be discounted by its improbability to such extent as to negate any justification, even for restriction upon criminal advocacy of subversion. We may even withhold approval, for purposes of argument, from those authorities which have upheld such restrictions as applied to the receipt of unemployment and housing benefits. We may also assume that the restrictions imposed by the constitutional and statutory provisions involved in the pending case could not be validly applied to other tax exemptions differing in kind and purpose from [fol. 85] the veteran's tax exemption here involved.

The underlying purpose of the public policy of granting tax exemptions and other benefits to veterans has been considered and specifically stated by the Supreme Court of California in cases involving the legality of such grants.

emptions) and does not extend to other kinds of taxes that would be within the coverage of the broader constitutional provision, must also be resolved against plaintiff.

Article XX, Section 19, of the Constitution is clearly self-executing and is enforceable in the courts to its full extent even without legislation, notwithstanding its direction to the legislature to enact such laws as may be necessary for its enforcement. (See *Peo. v. Western Air Lines*, 42 Cal. 2d 621, 637-8; *Chesney v. Byram*, supra; *Sutter v. City Council of Sacramento*, 64 Cal. App. 2d 1, 4.) Revenue & Taxation Code Section 32 is merely a permissible procedural statute, requiring that in the case of claims for the exemption in respect to certain types of property taxes—certainly a reasonable classification—a declaration must be filed as a means of establishing eligibility. (See *Chesney v. Byram*, supra.)

The facts of this case having been the subject of stipulation, it is ordered that defendant prepare conclusions of law and an appropriate judgment for defendant in accordance herewith.

Dated: July 25th, 1955.

/s/ W. T. Sweigert, Judge.

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[fol. 92]      [File endorsement omitted]

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR  
THE CITY AND COUNTY OF SAN FRANCISCO

CONCLUSIONS OF LAW—Filed July 28, 1955

The above entitled cause came on regularly for trial on the 3rd day of December, 1954, before the Court sitting without a jury, Lawrence Speiser, Esq., and Ralph Wertheimer, Esq., appearing for the plaintiff, and Dion R. Holm, Esq., City Attorney, appearing through Walker Peddicord, Esq., Chief Deputy City Attorney, and Robert M. Desky, Esq., Deputy City Attorney, appearing for the plaintiff; and the matter having been submitted on a Stipulation of Facts, filed with the Court on December 3, 1954, and briefs



In *Veterans Welfare Board v. Riley*, 188 Cal. 607, 611 (1922) the court said: "The payment of a pension or a bonus for past services showing the gratitude of the people, showing that the state is mindful of those who have made sacrifices for it, is an incitement to patriotism and an encouragement to defend the country in future conflicts."

In *Allied Architects v. Payne*, 192 Cal. 431, 439 (1923), the court said: "While it is true that the return anticipated is incorporeal and intangible, it is nevertheless a very vital and valuable return to the state. The promotion and promulgation of patriotism upon which the state must rely for its own self-preservation is in truth and in fact a good consideration for the thing granted by the state and justifies the extending the bounty of the state."

In *Board of Directors v. Nye*, 8 Cal. App. 527, 541, (1908) the court said: "Nor is it to be said that such legislation is altogether in the nature of compensation for services performed . . . I think that those who performed that extraordinary service for the government constitute a class, distinguished by a line clearly segregating them, not only from the general body of the people, but also from that other class entitled to be cared for, supported [fol. 86] and maintained at the public expense."

These authorities make clear that veteran programs are directed to and subserve a specific, important and unique public purpose over and beyond the incidental, tangible benefits enjoyed by any individual veteran. Their aim is held to be "the promotion and promulgation of patriotism upon which the government must rely for its own self-preservation." Only because they are thus purposed are they legally justifiable. Considered in their relation to possible governmental subversion by violence or other unlawful means, they are just as much designed as instrumentalities to forestall any such tendency as are, for example, a police department or the FBI. Only the method is different. The veteran program takes a positive, constructive approach, while the other must necessarily be negative, combative, restrictive.

Considered in this light, a veterans' program constrained to include within its bounty persons actively advocating

The plaintiff is a veteran of World War II and as such filed applications for and obtained tax exemptions from the defendant city and county for the tax years 1951-1952, 1952-1953 and 1953-1954, pursuant to the provisions of section 11 $\frac{1}{4}$  of article XIII of the Constitution. That section provides in its pertinent parts as follows: "The property to the amount of \$1,000 of every resident of this State who has served in the Army, Navy, Marine Corps, Coast Guard [fol. 163] or Revenue Marine (Revenue Cutter). Service of the United States (1) in time of war, or (2) in time of peace, in a campaign or expedition for service in which a medal has been issued by the Congress of the United States, and in either case has received an honorable discharge therefrom, ... shall be exempt from taxation ..."

On November 4, 1952, the Constitution was amended to add section 19 of article XX limiting the veterans' tax exemption, as well as other tax exemptions, to those otherwise entitled who do not advocate the overthrow of the federal or state government by force and violence or the support of a foreign government in the event of hostilities against the United States, and authorizing implementation by legislation to effectuate the provisions of the constitutional amendment. Accordingly, on July 1, 1953 (Stats. 1953, ch. 1503, §1, p. 3114) section 32 was added to the Revenue and Taxation Code providing that applications for tax exemptions must contain an oath as specified by that section. The constitutional amendment and the implementing legislation are the same as those set forth and considered in the opinion of this court in *The First Unitarian Church of Los Angeles v. County of Los Angeles*, ante, p. —.

On April 12, 1954, the plaintiff filed in the office of the assessor of the defendant city and county an application for a property tax exemption for the tax year 1954-1955. The application form furnished by the assessor contained, [fol. 104] for the first time, the non subversive affidavit required by section 32 of the Revenue and Taxation Code. The plaintiff failed and refused to sign the application containing the oath. Facts were stipulated to which otherwise appear to entitle the plaintiff to the exemption. The application was denied. The plaintiff paid the tax under protest



having been filed and the cause having been orally argued on June 1, 1955, and documentary evidence, including legislative materials having been introduced, and the cause submitted for decision, and a Memorandum Opinion and Decision having been filed herein on July 25, 1955, and Findings of Fact having been waived in and by the Stipulation of Facts herein submitted, the Court now makes its conclusions of law as follows:

## CONCLUSIONS OF LAW

### I

That upon the Stipulation of Facts herein the plaintiff is not entitled to recover.

### II

That plaintiff should take nothing by his complaint on [fol. 93] file herein.

### III

That plaintiff is not entitled to any relief in this action.

### IV

That Article XX, Section 19, of the Constitution of the State of California is constitutional under both the United States Constitution and Constitution of the State of California, valid and applicable to plaintiff herein.

### V

That Section 32 of the Revenue and Taxation Code of the State of California is constitutional under both the United States Constitution and the Constitution of the State of California, valid and applicable to plaintiff herein.

### VI

That Article XX, Section 19, of the Constitution of the State of California is independently self-executing and directly applicable to plaintiff herein.

subversion by force and violence, and support of enemies in time of hostilities, would be stultified, devitalized and defeated in its unique purposes.

Who can say that a veterans program in such sorry condition would not be in the long run more destructive of patriotic standards, more conducive to widespread cynicism, and more of a menace to governmental survival than would be the presence of some advocate of subversion in a lowly, relatively unimportant public clerkship? [fol. 87] Yet that clerk can be, and is, required to take his loyalty oath. It is, therefore, an oversimplification of the issue to merely ask: "What harm can result from allowing a few such advocates to enjoy a veteran's tax exemption?". Subversion can be as effectively advanced from psychological as from tactical causes.

The prevention of any such subversive advance must be deemed to have been the reason for the enactment by the people and the legislature of the provisions in question, at least in so far as they are applicable to the veterans' tax exemption program.

Precedent for such reasoning and policy may be found in the provisions of the federal veterans programs enacted by the Congress. Sec. 28 USCA, sec. 728, provides that the director of the Veterans Administration may forfeit the benefits of any veteran found by him to be guilty of treason, sabotage, or rendering assistance to an enemy.

It should be added that a veteran's exemption or other veteran's benefit is not a matter of natural or constitutional right. It is a privilege; and, although neither the electorate nor the legislature may impose discriminatory or otherwise invalid conditions within the limits of the privilege, certainly they may attach such conditions, applicable to all who seek to enjoy it, as are reasonably necessary to effectuate the purpose of the privilege or to prevent its frustration. (See *Hamilton v. U.S.*, 293 US, 245.)

Therefore, having in mind the unique purpose of the [fol. 88] veterans' exemption laws, and in view of the substantial reasons implicit in the legislation here involved, and in the further light of the presumption of its validity, it cannot be held as a matter of law that "the gravity of the evil, discounted by its improbability" is

and commenced this action to recover the same. He claims that he is entitled to the exemption without compliance with the constitutional amendment and the statutory enactment passed in pursuance thereof. He contends that section 19 of article XX of the Constitution and section 32 of the Revenue and Taxation Code violate provisions of the state and federal Constitutions. In support of his contentions he argues that the provisions of our state law infringe upon various aspects of freedom of speech; that because section 32 of the Revenue and Taxation Code does not apply to all of those entitled to tax exemptions it constitutes special legislation and he is denied due process and equal protection of the law, and that it fallaciously infers that those who do not sign the oath engage in the prohibited advocacy. It is also urged that the constitutional amendment is void because it embraces more than one subject.

In the case of the First Unitarian Church of Los Angeles v. County of Los Angeles, ante, p. —, this court declared the purposes of the constitutional amendment and its implementing legislation as applied to churches and held both enactments to be valid. The same reasons and conclusions apply to tax exemption claims by veterans provided for in section 11 $\frac{1}{4}$  of article XIII of the Constitution. Veterans traditionally have been selected by the states and by the nation for numerous special bounties and benefits. These are said to be, in part at least, in consideration for services in the public interest and welfare and as encouragement to others to follow their example. (See Allied Architects' Assn. v. Payne, 192 Cal. 431; Veterans' Welfare Board v. Riley, 188 Cal. 607, 611.) In the case of The First Unitarian Church of Los Angeles v. County of Los Angeles, above referred to, it was held that the pursuit of such objectives by the state through the means employed in the constitutional amendment and implementing legislation does not in any way violate the right of free speech; that the classifications imposed are reasonable and proper; that they do not violate any constitutional provision, and that the oath requirement of section 32 of the Revenue and Taxation Code is valid. That case is controlling here. The further contention that section 32 fallaciously infers that those who do not subscribe to the oath engage in the pro-

## VII

That in failing to execute the declaration, pursuant to the above provisions, that he does not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means, nor advocate the support of a foreign government against the United States in the event of hostilities, plaintiff has not qualified under the above provisions for any [fol. 94] tax exemption as a veteran, in that he has not shown himself to be a person entitled to receive the said exemption.

## VIII

That plaintiff is not entitled to the tax exemption claimed.

## IX

That defendant properly retains for its own benefit, according to law, the tax paid to it, and the whole thereof, without exemption or deduction on any ground of protest asserted by plaintiff.

## X

That defendant should have judgment for its costs of suit herein incurred.

Dated: July 28th, 1955.

/s/ W. T. Sweigert, Judge of the Superior Court.

[fol. 95] [File endorsement omitted]

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR  
THE CITY AND COUNTY OF SAN FRANCISCO

JUDGMENT AFTER TRIAL BY COURT—July 28, 1955

The above-entitled cause came on regularly for trial on the 3rd day of December, 1954, before the Court sitting without a jury, Lawrence Speiser, Esq., and Ralph Wertheimer, Esq., appearing for the plaintiff, and Dion R. Holm, Esq.,



insufficient to justify whatever abridgment of speech, if any, is necessarily involved in the requirement of Const. Art. XX, Sec. 19, and Rev. & Tax. Code Sec. 32.

These enactments come to the courts "encased in the armour of previous legislative deliberation" (*Amer. Comm. v. Doubs, supra*). It is presumed that the electorate and the legislature made inquiry to determine whether there was an evil to be remedied and that the enactments were based on the result of such inquiry. (*Re: Livingston*, 10 Cal. 2d 730.) All presumptions and intendments favor the validity of a statute, and mere doubt does not afford sufficient reason for a judicial declaration of invalidity. Statutes must be upheld unless their unconstitutionality clearly, positively and unmistakably appears. *Lockheed v. Sup. Ct.*, *supra*, at p. 484; *Cohen v. Wright*, *supra*, at p. 316-318. These guiding principles are particularly applicable in a court of first instance.

The case of *Danskin v. San Diego*, 28 Cal. 2d 536 (1946), relied upon in *Speiser v. Randall*, No. 6060 Superior Court of Contra Costa County (2-9-55), and also strongly relied upon by plaintiff herein, is, in our opinion, quite distinguishable. There the Civil Liberties Union applied [fol. 89] for the use of a school auditorium for a meeting on the general theme of "The Bill of Rights in Post-War America", featuring well-known speakers. The school board, pursuant to a provision of the Education Code, withheld its permission for such use unless the applicants subscribed an oath to the effect that they did not advocate, and were not affiliated with any organization which advocated, government overthrow by force or violence. The court very properly held that the statute was not directed against the advocacy of revolutionary doctrines, but would have suppressed speech and assembly on any subject (italics ours) by the advocates of such doctrines or by those who were even merely affiliated with such advocates (p. 545).

In the pending case the declaration requirement will not have the effect of preventing or limiting advocates of subversion from exercising their constitutional right to assemble and speak on permissible subjects, nor does it at all affect any speech or assembly rights except such as

hibited activity is without merit. The Legislature may properly require that a claimant perfect his application for a property tax exemption by compliance with reasonable regulations in implementation of section 11 $\frac{1}{4}$  of article XIII [fol. 106] of the Constitution. (*Chesney v. Byram*, 15 Cal. 2d 460, 465.) Finally the plaintiff's contention that the constitutional amendment violates section 24 of article IV of the Constitution, which provides that "Every act shall embrace but one subject, which subject shall be expressed in its title", is also without merit. Article IV of the Constitution deals with the "Legislative Department" and section 24 is intended to be and has been limited to legislative enactments under the Constitution: (See *McClure v. Riley*, 198 Cal. 23, 26; *Ex parte Haskell*, 112 Cal. 412, 421.)

No good reason appears why veterans should not be required to comply with the same reasonable regulations and conditions provided by section 32 of the Revenue and Taxation Code as are applied to all other included tax exemption claimants.

The judgment is affirmed.

Shenk, J.

We Concur: Schauer, J., Spence, J., McComb, J.

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[fol. 107]

#### DISSENTING OPINION

For the reasons stated in my dissenting opinion in *First Unitarian Church v. County of Los Angeles*, ante p. —, I would reverse the judgment.

Traynor, J.

I Concur: Gibson, C.J.

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[fol. 108]

#### DISSENTING OPINION

For the reasons stated in my dissenting opinion in *First Unitarian Church of Los Angeles v. County of Los Angeles*, ante p. —, I would reverse the judgment.

Carter, J.



[fol. 109] [File endorsement omitted]

IN SUPREME COURT OF THE STATE OF CALIFORNIA

[Title omitted]

No. S.F. 19450

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed May 27, 1957

I

Notice Is Hereby Given that Daniel Prince, the appellant above named hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of California affirming the judgment of the trial court entered in this action on April 24, 1957.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

II

The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the United States Supreme Court and include in said transcript:

1. Opinion of the Supreme Court of California;
2. Clerk's Transcript of the record before the Supreme Court of California;
3. This Notice of Appeal.

III

The following questions are presented by this appeal:

- [fol. 110] 1. Whether Section 19, Article 20 of the Constitution of the State of California, which denies any tax exemption to advocates of the overthrow of the government of the United States by force, violence, or unlawful means and to advocates of the support of a foreign government against the United States in the event of hostilities, and Section 32 of the Revenue and Taxation Code of California which requires all applicants (organizational or individual) for property tax exemptions (with the exception of applicants for the householders exemption) to sign

a declaration that they do not advocate the proscribed doctrines, on their faces and as construed and as applied, are unconstitutional in violating the due process clause of the Fourteenth Amendment and through it, the First Amendment to the United States Constitution in abridging freedom of speech and assembly in the following manner and respects:

- a) In infringing on these freedoms while bearing no reasonable relationship to the evil sought to be controlled by the enactments nor any reasonable relationship to the public welfare;
  - b) In infringing on these freedoms without any showing of a clear and present danger existing by reason of the receipt of tax exemptions by advocates of the proscribed doctrines or those who, for reason of conscience, refuse to sign a declaration that they do not advocate the proscribed doctrines;
  - c) In abridging these freedoms by imposing a prior restraint in that the language of the acts are vague and uncertain in their terms.
2. Whether the aforestated enactments, as written, construed and applied, deprive the appellant of his liberty and property without trial or hearing, accusation, confrontation, right to confrontation, right to cross-[fol. 111] examination, or the assistance of counsel; subvert the presumption of innocence and alter the rules of evidence and attain the appellant by legislative fiat, all in violation of the due process clause of the Fourteenth Amendment and the provision of Article I, Section 9, Clause 3 of the Constitution of the United States.
3. Whether the said enactments as written, construed and as applied are unconstitutional in violating the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution in imposing an unconstitutional condition upon the enjoyment of a privilege in requiring relinquishment

of the right to freedom of speech and assembly as a condition for receiving a tax exemption.

4. Whether the said enactments, as written, construed and applied, violate the equal protection clause of the Fourteenth Amendment to the United States Constitution in discriminatorily denying tax exemptions to the appellant while granting them to all others in similar circumstances.
5. Whether the said enactments violate the privileges and immunities clause of the Fourteenth Amendment of the United States Constitution.
6. Whether the said enactments, as written, construed and applied, violate the equal protection clause of the Fourteenth Amendment to the United States Constitution in unreasonably and discriminatorily requiring a declaration of non-advocacy of the proscribed doctrines only for certain property tax exemptions and the corporate income tax exemptions but not for the householders and all other tax exemptions.
7. Whether the said enactments, as written, construed and as applied, regulate and restrict sedition, a subject-matter entirely within the cognizance and province of the federal government, under the Constitution of the United States and which the Congress of the United States, by legislative enactments, has preempted and wholly occupied the field.

Dated this 24th day of May, 1957.

/s/ Lawrence Speiser, Attorney for Appellant, c/o American Civil Liberties Union of Northern California, 503 Market Street, Room 702, San Francisco 5, California.

[fol. 113] Affidavit of service (omitted in printing).

[fol. 114] Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 115] SUPREME COURT OF THE UNITED STATES  
Nos. 483 and 484, October Term, 1957

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LAWRENCE SPEISER, Appellant,

v.

JUSTIN A. RANDALL, as Assessor of Contra Costa County,  
State of California; and

DANIEL PRINCE, Appellant,

v.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation.

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Appeals from the Supreme Court of the State of California.

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ORDER NOTING PROBABLE JURISDICTION—November 25, 1957

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are consolidated and transferred to the summary calendar with a total of one hour allowed for oral argument.

The Chief Justice took no part in the consideration or decision of these applications.

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# In the Supreme Court of the United States

OCTOBER TERM, 1957

LAWRENCE SPEISER,

*Appellant,*

vs.

JUSTIN A. RANDALL, as Assessor of Contra  
Costa County, State of California.

*Appellee.*

No. 483

DANIEL PRINCE,

*Appellant,*

vs.

CITY & COUNTY OF SAN FRANCISCO, a  
Municipal Corporation,

*Appellee.*

No. 484

## Jurisdictional Statement

On Appeal from the Supreme Court of the State of California

LAWRENCE SPEISER

*In propria persona*

FRANKLIN H. WILLIAMS

690 Market Street

San Francisco 4, California

*Attorney for Appellants*



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# In the Supreme Court of the United States

OCTOBER TERM, 1957

LAWRENCE SPEISER,

*Appellant,*

VS.

JUSTIN A. RANDALL, as Assessor of Contra  
Costa County, State of California.

*Appellee.*

No. ....

DANIEL PRINCE,

*Appellant,*

VS.

CITY & COUNTY OF SAN FRANCISCO, a  
Municipal Corporation,

*Appellee.*

No. ....

## Jurisdictional Statement

On Appeal from the Supreme Court of the State of California

Appellants appeal from the judgments of the Supreme Court of the State of California, entered April 24, 1957, and respectfully submit this statement for both cases to show that the Supreme Court of the United States has jurisdiction of these appeals and that substantial questions are presented.

## OPINIONS BELOW

The Trial Court in the case of *Speiser v. Randall* issued an opinion signed by all five Superior Court Judges sitting on the case en banc. It is not reported. It is set forth hereinafter as Appendix A.

The Trial Court in the case of *Prince v. City and County of San Francisco* issued an opinion set forth hereinafter as Appendix B.

The opinions of the Supreme Court of the State of California for the two cases herein appealed, are reported in the Advance California Reports, the official advance sheets of the Supreme Court of the State of California, at 48 A.C. 476 and 472. They are also unofficially reported at 311 P.2d 546 and 544.

Appended to this Statement are copies of these opinions with the *Speiser* opinion and judgment denoted Appendix C and the *Prince* opinion and judgment as Appendix D, and the opinion and judgment by the same court on the same day in a companion case, *First Unitarian Church v. County of Los Angeles*, 48 A.C. 417, as Appendix E, to which references are necessary to ascertain the grounds of the judgments here appealed.

## JURISDICTION

The nature of the proceedings in the case of *Speiser v. Randall* (which will be hereinafter referred to as the *Speiser* case) was an action for declaratory relief to adjudge unconstitutional the California Constitutional provision and the Revenue and Taxation Code section here in issue. It was brought pursuant to California Code of Civil Procedure Section 1060, (Stats. 1921, c. 463). The case of *Prince v. City and County of San Francisco* was also an action for declaratory relief as well as an action to recover

taxes paid under protest, and was brought pursuant to the appropriate California statutes, Revenue & Taxation Code Section 5138, (Stats. 1941, c. 663), and Code of Civil Procedure Section 1060, (Stats. 1921, c. 463). Judgments in both cases were entered April 24, 1957. Notices of Appeal were filed with the Supreme Court of the State of California on May 27, 1957, and enlargements of time to file the jurisdictional statements were granted until September 24, 1957, by the Chief Justice of that court and filed therewith July 10, 1957.

In accordance with Rule 15(3) of the Rules of the Supreme Court, this one jurisdictional statement is filed for both cases because identical questions are involved.

Jurisdiction of these appeals are conferred upon the Supreme Court by Title 28, United States Code, Section 1257(2). Cases sustaining the jurisdiction are *Atchison T. & S.F. Ry. Co. v. Public U. Commission* (1953), 346 U.S. 346, 74 S.Ct. 92, and *Standard Oil Co. of California v. Johnson* (1942), 316 U.S. 481, 62 S.Ct. 1168.

### STATUTES INVOLVED

The validity of the following state statutes is involved:

*California Constitution*, Article XX, Section 19:

"Notwithstanding any other provision of this Constitution, no person or organization which advocates the overthrow of the Government of the United States or the State by force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall:

• • • • •  
 "(b) Receive any exemption from any tax imposed by this State or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State.

"The Legislature shall enact such laws as may be necessary to enforce the provisions of this section."

*Revenue & Taxation Code of California, Section 32,*  
(Stats. 1953, c. 1503):

"Any statement, return or other document in which is claimed any exemption, other than the householder's exemption, from any property tax imposed by this State or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State shall contain a declaration that the person or organization making the statement, return, or other document does not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means nor advocate the support of a foreign government against the United States in event of hostilities. If any such statement, return, or other document does not contain such a declaration, the person or organization making such statement, return, or other document shall not receive any exemption from the tax to which the statement, return, or other document pertains. Any person or organization who makes such declaration knowing it to be false is guilty of a felony. This section shall be construed so as to effectuate the purpose of Section 19 of Article XX of the Constitution."

### QUESTIONS PRESENTED

In 1952, Section 19, Article XX of the Constitution of the State of California, was adopted which denies any tax exemption to advocates of the overthrow of the government of the United States by force, violence, or other unlawful means and to advocates of the support of a foreign government against the United States in the event of hostilities.

In the following year, the legislature adopted Section 32 of the Revenue and Taxation Code of California requiring



only applicants (organizational or individual) for property tax exemptions (with the exception of applicants for the householders exemption) to sign a declaration that they do not advocate the proscribed doctrines.

The questions presented are whether these enactments, on their faces and as construed and applied, are unconstitutional in being repugnant to the United States Constitution in the following respects:

1. In violating the due process clause of the Fourteenth Amendment and through it, the First Amendment to the United States Constitution in abridging freedom of speech and assembly:

a) By infringing on these freedoms while bearing no reasonable relationship to the evil sought to be controlled by the enactments nor any reasonable relationships to the public welfare;

b) By infringing on these freedoms without any showing of a clear and present danger existing by reason of the receipt of tax exemptions by advocates of the proscribed doctrines or by those who, for reason of conscience, refuse to sign a declaration that they do not so advocate;

c) By abridging these freedoms by imposing a prior restraint in that the language of these acts are vague and uncertain in their terms.

2. By violating the due process clause of the Fourteenth Amendment and the provisions of Article I, Section 9, Clause 3 of the Constitution of the United States, in taking away liberty and property without trial or hearing, accusation, right to confrontation, right to cross-examination, or the assistance of counsel, and in subverting the presumption of innocence, altering the rules of evidence and in being a bill of attainder.

3. By violating the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution in imposing an unconstitutional condition upon the enjoyment of a privilege in requiring relinquishment of the right to freedom of speech and assembly, as a condition for receiving a tax exemption.

4. By violating the equal protection clause of the Fourteenth Amendment to the United States Constitution in arbitrarily and discriminatorily denying tax exemptions to the appellants while granting them to all others in similar circumstances.

5. By violating the privileges and immunities clause of the Fourteenth Amendment to the United States Constitution.

6. By violating the equal protection clause of the Fourteenth Amendment to the United States Constitution in unreasonably and discriminatorily requiring a declaration of non-advocacy of the proscribed doctrines for only certain property tax exemptions and the corporate income tax exemptions but not for the householders and all other tax exemptions.

7. By violating the supremacy clause of the Constitution in attempting to regulate and restrict sedition, a field entirely within the province of the federal government, and which the Congress of the United States, by legislative enactments, has preempted and wholly occupied.

### **STATEMENT**

Appellants' suits involve entirely identical questions and so are presented here in this single jurisdictional statement.

The facts in each case are not in dispute (48 A.C. 476, 472 (App. C and D)). Appellants are both veterans of World

War II and as such are qualified for the veterans property tax exemption pursuant to the provisions of Section 11 $\frac{1}{4}$  of Article XIII of the California Constitution which provides in pertinent parts as follows:

"The property to the amount of \$1,000 of every resident of this State who has served in the Army, Navy, Marine Corps, Coast Guard or Revenue Marine (Revenue Cutter) Service of the United States (1) in time of war, or, (2) in time of peace, in a campaign or expedition for service in which a medal has been issued by the Congress of the United States, and in either case has received an honorable discharge therefrom, \* \* \* shall be exempt from taxation. \* \* \*"

It is conceded that each appellant was in all respects qualified for and entitled to the exemption with the single alleged exception that each appellant in applying for the veterans tax exemption signed the application but first crossed out the language placed there pursuant to Revenue & Taxation Code Section 32, to wit, that the applicant does not advocate the overthrow of the Government of the United States or the State by force or violence or other unlawful means, nor advocate the support of a foreign government against the United States in the event of hostilities.

This language in the application arose from the passage in November 4, 1952, of Section 19, Article XX, of the California State Constitution denying the tax exemptions to all advocates of those proscribed doctrines, and the passage in the following year by the state legislature of Section 32 of the Revenue & Taxation Code which required that all applicants for property tax exemptions (with the exception of applicants for householder's exemption) must sign such declarations of non-advocacy.

Both applications were denied. Speiser filed suit for declaratory relief in the Superior Court of Contra Costa County. All five superior court judges of that county for

the first time in its history sat en banc on the case and ruled unanimously that both the constitutional amendment and Revenue & Taxation Code Section 32 were unconstitutional in violating the free speech and due process provisions of the federal constitution. They also ruled that the code provision violated the equal protection clause of the Fourteenth Amendment since the declaration of non-advocacy was not required from all applicants for all exemptions (*Speiser Clerk's Transcripts*, pp. 17, 25).

After Prince's application was denied, he paid his taxes under protest and filed suit for recovery of the taxes and for declaratory relief. The trial court judge ruled against his constitutional arguments and upheld both the constitutional provision and the Revenue & Taxation Code section (*Prince Clerk's Transcript*, pp. 44, 47).

At no stage in the proceedings has it been contended, much less has any evidence been adduced, that appellants advocate the overthrow of the governments of the United States or California by force or violence, or otherwise, or are in any way disloyal. Rather, the record clearly demonstrates that the sole reason for appellants' refusal to sign the non-subversive oath, and the consequent loss of the exemption, were their strong belief that its exaction violated fundamental constitutional rights with respect to freedom of speech, due process, and equal protection.

That the federal questions sought to be reviewed were raised is abundantly clear in the companion case, to which reference has already been made. See *First Unitarian Church v. County of Los Angeles*, 48 A.C. 417 (App. E, especially pp. 38 to 51). That the contentions of these appellants that the statutes were repugnant to the United States Constitution were discussed and disposed of adversely to appellants is indicated below in the opinions in the appellants' cases (See 48 A.C. 476, 472, (Appendices C and D)).

The record which has been filed herewith demonstrates that the federal constitutional questions here presented were raised both at trial and on appeal. Each appellant's complaint specifically and in detail alleged the impairment and violation of rights protected by the First and Fourteenth Amendments to the Constitution (See *Speiser Clerk's Transcript*, pp. 10; *Prince Clerk's Transcript*, p. 6).

Specific reference to the federal questions here presented are also found in the trial court's findings of fact (*Speiser Clerk's Transcript*, pp. 18 et seq.), conclusions of law (*Speiser Clerk's Transcript*, p. 22), (*Prince Clerk's Transcript*, p. 44), memorandum opinions of the lower courts (*Speiser's* is unreported, but is attached hereto as Appendix C), (*Prince Clerk's Transcript*, p. 44 and App. D) and judgments (*Speiser Clerk's Transcript* p. 25; *Prince Clerk's Transcript*, p. 17).

On appeal to the California Supreme Court from the trial courts, wherein the five Contra Costa Superior Court judges were reversed, and the one San Francisco Superior Court judgment was affirmed, the Supreme Court expressly noted the federal questions had been raised in a companion case and declared it was controlling as to appellants' cause and contentions (48 A.C. 476, 472 (App. C and D)). It may be added that the federal questions were presented on appeal as provided for by the California procedure, namely, by being set forth in the written briefs of the respective parties. Additionally, the federal questions were argued orally.

## **THE FEDERAL QUESTIONS ARE SUBSTANTIAL**

### **Preliminary Statement**

It is to be noted that petitions for writs of certiorari have been filed with the United States Supreme Court for

this October term in two of the companion cases involving the validity of the same statutes here in issue. *People's Church of San Fernando Valley v. County of Los Angeles*, Docket No. 385; and, *First Unitarian Church of Los Angeles v. County of Los Angeles*, Docket No. 382.

In addition, concurrently with the filing of the jurisdictional statement in the two instant cases, a jurisdictional statement has also been filed in the cases of *First Methodist Church of San Leandro v. Horstmann*, and *First Unitarian Church of Berkeley v. Horstmann*.

All of the cases involve identical issues with the single exception that in the instant cases involving veterans, there is no issue of religious freedom as has been raised in all of the other cases mentioned above which involve churches as complaining parties.

There have been set out in the Jurisdictional Statement in the case of *First Methodist Church of San Leandro v. Horstmann*, and *First Unitarian Church v. Horstmann*, filed concurrently herewith, involving the same questions as in the instant cases (with the exception of the freedom of religion argument) comprehensive reasons why the questions involved are substantial. Appellants here adopt the reasons and arguments there advanced to avoid unnecessarily burdening the court with duplicative reading, but wish to give greater emphasis to some of the points therein made.

**I. The Court Below Upheld the Penalization of All Advocacy of the Proscribed Doctrines Whether or Not It Presented a Clear and Present Danger Thus Infringing on Free Speech Contrary to the Decisions of This Court.**

It was just a few short months ago that this Court reemphasized a sharp line between speech which may be penalized and speech which may not. The Court held that the



proper place to draw the line is between advocacy which is an incitement to action (not just possible action but probable action as set forth in *Dennis v. United States* (1951), 341 U.S. 494) and that which is not. In *Yates v. United States*, 354 U.S. 1, 1 L.Ed. 1356, this Court held that there must be a distinction drawn between advocacy of forcible overthrow as an abstract doctrine and advocacy of action to that end.

The majority in the court below failed to observe this distinction in its holding which was decided before the United States Supreme Court decision in *Yates v. United States, supra*. The majority's lack of understanding of this principle is clearly reflected in its statement in the majority opinion of the companion case *First Unitarian Church v. County of Los Angeles*, (App. E, 39), in which it states:

"In the present case it is apparent that the limitation imposed by Section 19 of Article XX as a condition of exemption from taxation is not a limitation on mere belief but is a limitation on action—the advocacy of certain proscribed conduct. What one may merely believe is not prohibited. It is only advocates of the subversive doctrines who are affected. Advocacy constitutes action and the instigation of action, not mere belief or opinion." (Emphasis added.)

Such is not the law nor has it been since this Court has been examining free speech issues. Even *Gillow v. New York*, 208 U.S. 652, cited by the majority of the court below as authority for the proposition that advocacy constitutes action does not so hold, as this Court pointed out recently in *Yates v. United States, supra*.

The majority of the court below has committed the same error that the trial court in *Yates* had committed, in thinking that *Dennis* had obliterated "the traditional dividing

line between advocacy of abstract doctrine and advocacy of action" (1 L.Ed. 2d at 1376).

This distinction was clearly seen by the dissenters in their opinion. Justice Traynor, writing for himself and Chief Justice Gibson, stated (App. E, 55):

"The state provisions in question penalize advocacy in a totally different context from that in the Dennis case. The penalty falls indiscriminately on all manner of advocacy whether it be a call to action or mere theoretical prophecy that leaves the way open for counter-advocacy by others. Moreover, with regard to advocacy of support of a foreign government, the state provisions penalize not only the advocacy during actual hostilities but also advocacy during peacetime of action during hostilities that may occur, if at all, in the remote future."

Justice Carter, in his dissent, made the same point (App. E, 84).

Later in its opinion, the court below states (App. E, 47):

"It must be said that such advocacy *from whatever source* poses a threat to our government and that the gravity of the evil is not to be materially discounted by its improbability within the meaning of the test employed in the Dennis case." (Emphasis added.)

From this it is evident that the majority of the court below effectively discards the clear and present danger doctrine. There is no looking at circumstances—it is the advocacy, itself, *per se*, that is a danger.

It is significant that prior to the California Supreme Court's 4-3 ruling in this case, some nine trial court judges had passed judgment on the Federal Constitutional questions here involved. Of those nine, seven found the provisions repugnant to the Federal Constitution (six on free speech, due process and equal protection grounds). If the

State Supreme Court is included, it may be seen that of the sixteen judges who have ruled, ten state judges believe the provisions to be invalid.

## **II. The Enactments Here in Issue Affect the Rights and Liberties of All California Residents and Organizations.**

The constitutional provision is mandatory in its terms. It denies any tax exemption to any person or organization which advocates the proscribed doctrines. The mere fact that a declaration of non-advocacy has not as yet been required from all parties receiving any exemption should not obscure the fact that all residents of the State of California are within the purview of the constitutional amendment.

It seems fairly clear that all residents of California, young or old, are the recipients of some type of tax exemption.

All individuals have either a personal income tax exemption of \$2,000, if single, or \$3,500, if married, plus exemptions of \$400 for each dependent (California Revenue & Taxation Code Section 17181). It is true that taxpayers do not have to file returns unless their gross income exceeds these exempted amounts (Revenue & Taxation Code Section 18401).

However, that does not obviate the fact that all persons with any income come under the provisions of constitutional provisions since they do receive some exemption, whether or not they are required to file a return. Even at that, the Statistical Abstract of the United States shows (p. 371) that in 1952, 4,598,000 income tax returns were filed by Californians.

In addition, the Abstract shows California as having 3,336,391 householders in 1950. The California Constitu-

tion (Article XIII, Section 10½) provides for a \$100 property tax exemption for every householder in the State.

The Abstract further shows (p. 628) that in 1954 there were 123,000 farms in this state. (Article XIII, Section 1 of the California Constitution exempts from taxation all growing crops in the state). The annual report of the Los Angeles County Tax Assessor for 1955-56, page 8, lists as the number of veterans who filed claims for exemption in the county in 1956, as 501,000. The total number of veterans in the state eligible for exemption probably exceeds one and one-half million. There are inheritance tax exemptions, gift tax exemptions, as well as sales and use tax exemptions, in California.

Therefore, these enactments affect the free speech of almost all individuals in California even though there has not been a showing of clear and present danger from tax exemptees as a group. In the case of *American Communications Association v. Douds*, 339 U.S. 382, this Court clearly indicated that merely because an expurgatory oath can be demanded in one particular situation, as in that case from just a few individuals, was no reason to assume that it could be demanded from the populace as a whole. For the Court said:

"Section 9(h) touches only a relative handful of persons leaving the great majority of persons of the identified affiliations and beliefs completely free from restraints.

• • • It becomes highly relevant whether the person who is asked whether he believes in overthrow of the government by force is a general with 500,000 men at his command or a village constable. To argue that because the latter may not be asked his beliefs the former

must necessarily be exempted is to make a fetish of beliefs."

### III. The Phrase "Advocacy of the Support of Foreign Government" Has Never Been Judicially Interpreted by This Court.

This Court has not yet determined whether the peacetime advocacy of the support of a foreign government in the event of hostilities is within or without the scope of the free speech clauses of the First Amendment, or whether it violates the "vice of vagueness" rule. The majority opinion of the court below barely touched on this clause. The major reason for this readily suggests itself—there are simply no cases interpreting the phrase "advocacy of the support of a foreign government against the United States in the event of hostilities". Thus, there is a clean slate.

It is clear that this clause covers peacetime advocacy, i. e. advocacy occurring right now. The penalty of deprivation of tax exemptions is placed on advocates or those who refuse to say whether they advocate what position should be taken in the event of hostilities—an eventuality which might never occur. Therefore, this advocacy cannot possibly be considered an incitement and, as has been pointed out, it is only incitements that are not protected by the First Amendment. *Yates v. United States*, 354 U.S. ....

We have even a further distinction involved here. In several cases, this Court has relied on congressional and legislative findings of the clear and present danger presented by individuals who advocate certain doctrines being in certain positions. (See *Adler v. Board of Education*, 342 U.S. 485; *American Communications Association v. Douds*, 339 U.S. 382, *supra*). There have been no legislative findings nor even any court decisions recognizing any danger from advocacy, during peacetime, of the support

of a foreign government against the United States in the event of hostilities. There has not even been any recommendations for legislation by the executive branch of the federal government, from the President, the State Department, the Attorney General, nor from the head of the Federal Bureau of Investigation that this particular advocacy should be made a crime, although it cannot be contended that any of these departments or persons have failed to display an intense interest in national security.

No state in the Union has legislation, other than California, or has made findings of any danger from the advocacy here involved. If such advocacy exists in California, and is serious enough to present a clear and present danger, it would appear that this advocacy should be made a crime and not just the basis for revocation of a tax exemption. *Yet California has not even made it a crime.*

The phrase here in question has some similarity to the language in the Sedition Act (1 Stat. 596) of 1798, which made it a crime to:

"Aid, encourage or abet any hostile designs of any foreign nation against the United States, their people or government."

However, the repeal of the Sedition Act prevented any consideration by this Court as to its validity.

This phrase offends the due process clause of the Fourteenth Amendment and through it the First Amendment's free speech guarantee, because it does not tell us precisely what speech is prohibited and what is not. It offends, therefore, against the vice of vagueness principle, *Winters v. New York*, 333 U.S. 507; *Lanzetta v. New Jersey*, 306 U.S. 451.



**IV. The Decision of the Court Below Upholds An Infringement on Free Speech Not to Meet Any Danger, but, Allegedly to Promote Patriotism, a Purpose Heretofore Held Insufficient by This Court for Such Abridgement.**

In a series of prior cases, this Court has held that liberty may not be abridged unless it is necessary to prevent some substantial evil. (*Yates v. United States*, 354 U.S. ...., *supra*; *Winters v. New York*, 333 U.S. 507, *supra*; *Thomas v. Collins*, 323 U.S. 516,

Even promotion of patriotism was held not to be a sufficient reason for infringing on the rights protected by the First Amendment. *West Virginia Board of Education v. Barnette*, 319 U.S. 624. Yet, that is exactly what the court below has authorized by its holding.

Justice Traynor, in his dissent cogently pointed this out when he stated (App. E, 38):

"In the present case the majority opinion thus states the governmental objective:

'Encouragement to loyalty to our institutions and an incentive to defend one's country in the event of hostilities \* \* \* doctrines which the state has plainly promulgated and intends to foster. It is the high purpose residing in its people that the state is attempting to encourage in its endeavor to protect itself against subversive infiltration \* \* \*. Obviously a program of tax exemption designed to promote adherence to the principles of our government but constrained to include within its bounty persons or organizations actively advocating subversion and the support of enemies in time of hostilities, would be wholly without reason and result in its own defeat.'

"The issue thus narrows to whether a state can properly restrain free speech in the interest of promoting what appears to be eminently right thinking. A state with such power becomes a monitor of thought to determine what is and what is not right thinking."

It was this same sort of infringement on liberty that the Wisconsin Supreme Court held to be violative of the First and Fourteenth Amendments when it ruled that a non-disloyalty oath as a condition of public housing tenancy was unconstitutional. There that court unanimously said:

"The decision of the United States Supreme Court in *American Communications Assn., CIO v. Douds*, 1950, 339 U.S. 383, 70 S.Ct. 674, 94 L.Ed. 925, makes it clear that, if Resolution 513 of the defendant Authority is to be upheld against the charge that it invades freedoms guaranteed by the First Amendment, *it must be upon the basis of combatting the threat of danger to the successful operation of public housing projects which might result from the infiltration of such housing facilities by tenants bent upon the overthrow of the government by force.*" (Emphasis added) *Lawson v. Housing Authority of City of Milwaukee*, 70 N.W. 2d 605, at 613, 270 Wis. 269, cert. den. 350 U.S. 882.

There have been other instances in which loyalty oaths have been imposed within recent times for some other purpose than meeting a danger, or for protecting the integrity of the public service, although none have as yet received the approval of this Court. Nor do we believe such approval likely.

Such provisions not only violate the free speech guarantee of the First Amendment, but also the due process clause in having no reasonable relation to the purpose sought to be accomplished. In the instant case there is no evil which the legislation seeks to correct. There is no showing and indeed no contention was made that there was any danger from advocacy by grantees of tax exemptions or that there is any danger that tax exemptees might engage, either within or without constitutional limits, in advocacy of doctrines proscribed by the provisions. As a matter of fact,

neither the legislature nor the people have made findings, of any such danger nor have counsel for appellees ever advanced the suggestion. As Justice Carter stated in his dissent, (App. E, 85):

"[T]here is no showing that the churches and veterans were highly organized into a war-like machine dedicated to the overthrow of the government by force and violence with leaders highly trained and ready to give the 'word' when the time was ripe for revolution! The objects of the legislation, the objective and the means used to achieve it are completely unrelated. Where is the 'danger' so far as churches and veterans are concerned? And does the denial of a charitable exemption constitute a reasonable attempt to save this country from revolution? Or does the oath involved just constitute an unconstitutional invasion of freedom of speech? In my opinion it constitutes an unconstitutional invasion of freedom of speech with the absurdity of the entire situation pinpointed by the thought that any embryo revolutionist would surely not hesitate to subscribe to such an oath."

**V. There Is a Conflict of Authority Amongst State Courts as to Whether a Privilege or Bounty May Be Withheld from Advocates of Proscribed Doctrines on the Basis of Their Advocacy.**

There have been a number of cases involving privileges which the states were not bound to grant in the first instance which have been tied to non-advocacy of certain doctrines or non-membership in certain organizations. We are eliminating from consideration either the government employment cases, i.e., *Adler v. Board of Education* (1952), 342 U.S. 485; *Garner v. Board of Public Works*, 341 U.S. 716, 95 L.Ed. 1317, 71 S.Ct. 909; *Gerende v. Board of Supervisors*, 341 U.S. 56, 95 L.Ed. 745, 71 S.Ct. 565; and, the case involving labor leaders (*A.C.A. v. Douds, supra*) since this

Court has clearly indicated that it was not deciding those cases on the grounds that a mere privilege was involved.

In some cases, the courts have determined that the privileges were withheld, not because there was a clear and present danger from the advocates, but because advocates of reprehensible doctrines are not entitled to and should not receive bounties by the states.

The most widespread and recent example involved a non-disloyalty declaration as a condition for living in public housing. In every case, throughout the country, the highest court ruling on the issue knocked down the requirement, although for different reasons. *Lawson v. Milwaukee Housing Authority*, 270 Wis. 269, 70 N.W. 2d 605; *Chicago Housing Authority v. Blackman* (1954), 4 Ill. 2d 319, 122 N.E. 2d 522; *Rudder v. United States*, 226 F.2d 51; *Housing Authority of Los Angeles v. Cordova*, 130 Cal. App. 2d Supp. 883, 279 P.2d 215; *Kutcher v. Newark Housing Authority*, 20 N.J. 2d 181, 119 Atl. 2d 1.

In a similar vein is the decision of the California Supreme Court which held that the right to use a forum of a school auditorium available to all by grace of the legislature, may not be conditioned on a disavowal of advocacy of forceful overthrow of the government. *Datskin v. San Diego Unified School District*, 28 Cal. 2d 536. In that case this very court below held that such a required disavowal would infringe on freedom of speech and assembly.

Opposed to that point of view are two cases from Ohio upholding a non-disloyalty declaration as a condition for unemployment insurance (*State v. Hamilton*, 92 Ohio App. 285, 110 N.E. 2d 37; *Dworken v. Collopy*, 91 N.E. 2d 564).

The majority in the court below even cited authority that the right to vote (Opinion of the Justices, 252 Ala. 351, 40 So. 2d 849) and to citizenship (*United States v.*

*Schwimmer*, 279 U.S. 644) may be conditioned by limitations on free speech since they are merely privileges or bounties.

If that statement of the law is correct, then it is diametrically opposed to statements by this Court in *Hannegan v. Esquire, Inc.*, 327 U.S. 146, 156.

### CONCLUSION

We believe that the questions here presented are substantial and of great public importance and warrant plenary consideration by this Court.

Respectfully submitted,

LAWRENCE SPEISER

*In propria persona*

FRANKLIN H. WILLIAMS

*Attorneys for Appellants*

(Appendices follow)

## **Appendix A**

*In the Superior Court of the State of California  
In and for the County of Contra Costa*

Lawrence Speiser,

Plaintiff,

vs.

Justin A. Randall, as Assessor of the  
County of Contra Costa, State of Cali-  
fornia,

Defendant.

No. 60660

Lawrence Speiser,

Plaintiff,

vs.

Mary Ellen Foley, Assessor of the City  
of El Cerrito, County of Contra Costa,  
State of California,

Defendant.

No. 60661

### **OPINION**

The plaintiff herein, a veteran of World War II, with an honorable discharge, claimed a veteran's real property exemption in the County of Contra Costa and City of El Cerrito. The claim was in the manner and form required by law except that the plaintiff crossed out the loyalty declaration as required by Section 32 of the Revenue and Taxation Code. This is an action for declaratory relief to determine the constitutionality of the requirement for the filing of the loyalty declaration.

Section 19, Article XX of the Constitution of the State of California provides that no one who advocates the overthrow of the United States or the State by force and violence



or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall receive any exemption for any tax imposed by the state, county, city or other political subdivision. After the adoption of this Article of the Constitution the Legislature adopted Section 32 of the Revenue and Taxation Code which reads in part as follows:

"Any statement, return or other document in which is claimed any exemption, other than the householder's exemption, from any property tax imposed by this State, or any county, city or county, city . . . shall contain a declaration that the person or organization making the statement, return or other document does not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means nor advocate the support of a foreign government against the United States in the event of hostilities."

This case presents the question of whether or not the California constitutional provision and Section 32 of the Revenue and Taxation Code are in violation of the First and Fourteenth Amendments to the Constitution of the United States. The Fourteenth Amendment provides that no state shall abridge the freedoms and immunities of the citizens of the United States. One of the freedoms is the freedom of speech guaranteed by the First Amendment.

Freedom of speech is a great fundamental right among free peoples. In the United States it has been long established and has its roots deep in the past. Our courts have zealously guarded this freedom. The right of free speech, however, is not unrestrained. Every sovereign state has a right to maintain its existence and protect itself from violent overthrow. This right has been equally protected. When these rights come into conflict a point must be established

beyond which the right of free speech will be suppressed and before which it will be protected.

The limit of free speech has been the subject of great concern by both the United States Supreme Court and the Supreme Court of our own state. A number of decisions have passed upon oaths similar to the one in question. We find that the guiding principle was established in a unanimous decision by the Supreme Court in *Schenck vs. United States*, 249 U.S. 47, where Justice Holmes, speaking for the Court, said:

"The question in every case is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."

In a later case the same Court said:

"What finally emerges from the clear and present danger cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished." (*Bridges vs. California*, 314 U.S. 252)

The rule has been applied in California by our Supreme Court in a case in which almost the identical oath was involved and under analagous circumstances. This case is *Danskin vs. San Diego Unified School District*, 28 Cal. 2d 536. There a school board had adopted a regulation that as a prerequisite to the use of a school building for a public meeting the person making the application should subscribe to and file with the board an oath essentially the same as the declaration now under consideration. After reviewing the decisions of the United States Supreme Court it held that such a requirement was an abridgment of free speech

and assembly and therefore in violation of the Amendments I and XIV of the Constitution of the United States. The Court said:

"The state must be on the alert for any clear and present danger to the community, sensitive to the warning signals, the ambience in which a forum is planned and the atmosphere that envelops it. It cannot look with equanimity upon those whose words or actions have already left in their wake a trail of violence.

"Always it must distinguish, however, between speech no matter how unorthodox that remains on a theoretical place and speech, no matter how skillfully intoned, that creates a clear and present danger to the community."

The Court then quoted the following language from *Schneiderman vs. United States*, 320 U.S., 118:

"There is a material difference between agitation and exhortation calling for present violent action which creates a clear and present danger of public disorder or other substantive evil and mere doctrinal justification or prediction of the use of force under hypothetical conditions at some indefinite future time—prediction that is not calculated or intended to be presently acted upon, thus leaving opportunity for general discussion in the common process of thought."

We believe that the principles laid down there are controlling here. In effect, the provisions involved here require those who advocate doctrines unacceptable to the rest of us to pay a larger tax than those who refrain from expressing such doctrines. We do not feel that this reasonably tends to avert a clear and present danger to the state.

The petitioner also urges, and we think with some merit, that there is an unreasonable classification created by Section 32 of the Revenue and Taxation Code. While the con-

stitutional provision is broad enough to cover all taxes, Section 32 of the Revenue and Taxation Code requires the affidavit only from those who claim tax exemptions on real property. The largest group in this classification is made up of veterans. On the other hand, however, one, no matter how subversive his activities may have been, is entitled without making such a declaration to claim the same exemptions as others on state, income and inheritance taxes as well as other state and local taxes.

The petitioner is entitled to judgment as prayed for.

Counsel for petitioner will prepare the necessary findings and judgment.

Dated: February 9, 1955.

(signed)

HAROLD JACOBY

HUGH H. DONOVAN

HOMER W. PATTERSON

NORMAN A. GREGG

WAKEFIELD TAYLOR

*Judges of the Superior Court*

*Appendix*  
**Appendix B**

*In the Superior Court of the State of California, in and for  
the City and County of San Francisco*

No. 440302

Daniel Princee,

Plaintiff,

vs.

City and County of San Francisco, a mu-  
nicipal corporation,

Defendant.

**MEMORANDUM OPINION AND DECISION**

Section 19, Article XX, of our State Constitution, adopted by vote of the people in November, 1952, provides that no person who advocates the overthrow of the government of the United States, or of this state, by force or violence or other unlawful means, or who advocates the overthrow of the government of the United States, or of this state by force or violence or other unlawful means, or who advocates the support of a foreign government against the United States in time of hostilities, shall hold any office or employment in this state or receive any exemption from any tax, either state or local. The section directs the legislature to enact such laws as may be necessary to enforce these provisions.

Under this constitutional mandate, the legislature, in 1953, enacted Section 32 of the Revenue and Taxation Code, which provides that in any statement or return, in which is claimed any exemption, other than the householder's exemption, from any property tax, shall contain a declaration to the effect that the person making the statement or return

does not come within the class to which exemptions are denied by the constitution.

This case arises out of the application of these provisions to a veteran's claim for the \$1,000 property tax exemption granted to veterans by the State Constitution (Art. XIII, Sec. 11 $\frac{1}{4}$ ).

Two conditions of eligibility for this veteran's exemption have been in the constitution from the beginning of the program many years ago: one, the requirement that the applicant shall have received an honorable discharge, and, second, the requirement that the applicant be possessed of property of a value less than \$5,000. The effect of the 1952 constitutional amendment here in question is to add a third condition to eligibility.

The plaintiff, a veteran otherwise qualified, refused to make the required declaration, was denied the exemption, paid his full property tax under protest, and in this action sues for the return of an alleged overpayment.

If the constitutional restriction is otherwise valid, the requirement of an oath from the veteran as a means of establishing eligibility is appropriate and lawful. (*Chesney v. Byram*, 15 Cal. 2d 460.) Plaintiff, however, contends that these provisions of our state law violate the First and Fourteenth amendments of the Constitution of the United States in respect to freedom of speech; also the Fourteenth Amendment in respect to due process and equal protection of the laws, and in that they constitute a bill of attainder.

It is hardly necessary to observe that we are here concerned, not with the political, sociological or moralistic arguments pro and con concerning oath requirements, nor with the debatable practical value of such requirements, but only with the legal aspects of a situation presented because the people and the legislature have resolved and foreclosed



such debate by their enactment of the requirement into the law.

Statutory requirements for declarations similar in principle to those here involved, and often considerably broader, have been upheld during recent years by the Supreme Court of the United States and the courts of this and other states.

They have been upheld as applied to:

Federal employees (*Bailey v. Richardson*, 341 US 918 (1950));

State employees (*Pockman v. Leonard*, 39 Cal. 2d 676 (1952));

County employees (*Steiner v. Darby*, 88 Cal. App. 2d 481 (1948));

Municipal employees (*Garner v. Bd. Pub. Wks.*, 341 US 716 (1951), affirming *Garner v. Bd. Pub. Wks.*, 98 Cal. App. 2d 493 (1950));

Public school teachers (*Adler v. Bd. of Ed.*, 342 US 485 (1952); see also, *Steinmetz v. Bd. etc.*, Cal. Supreme Ct., 7/5/55);

Labor union officials (*American Comm. Assoc. v. Douds*, 339 US 382 (1950));

Candidates for public office (*Gerende v. Bd. of Supervisors*, 341 US 56 (1951); *Shub v. Simpson*, 76 Atl. 2d 332 (Md. 1950));

Political parties (*Communist Party v. Peck*, 20 Cal. 2d 536 (1942); *Field v. Hall*, 143 S.W. 2d 567 (Ark. 1940));

Applicants for admission to the bar (*Re: Summers*, 325 US (1944); see also, *Cohen v. Wright*, 22 Cal. 293);

Voters (*Opinion of the Justices*, 40 So. 2d 849 (Ala. 1949); see also *Rison v. Farr*, 87 Am. Dec. 52 (Ark.); *Davis v. Reason*, 133 US 333);

Applicants for state unemployment benefits (*Dworken v. Collopy*, 91 NE 2d 564 (Ohio 1950); *State v. Hamilton*, 110 NE 2d 37);

Re Employees in essential industries, see (*Lockheed v. Sup. Ct.*, 28 Cal. 2d 481; *Black v. Cutter Lab.*, 43 Cal. 2d 788 (1955));

Applicants for public housing (*Peters v. N.Y. Housing*, 128 NYS 2d 112 (N.Y. 1954); *Rudder v. U.S.* (Mun. Ct. App., D.C.), 105 A2d 741 (1954). But see CCA 7-21-55).

Most of the relatively few authorities invalidating such declaration requirements will be found to have turned upon the point that the particular declaration was ambiguous in respect to scienter, or in some respect distinguishable from the declaration here involved. (See *Wieman v. Updegraff*, 344 US 183; *U.S. v. Schneider*, 45 Fed. Supp. 840; *Chicago Housing v. Blackman*, 122 NE 2d 522 (1954), or upon the ground that other statutory oath requirements were exclusive. (See *Tolman v. Underhill*, 103 Cal. App. 2d 195 (superseded in 39 Cal. 2d 708); *Imbrie v. Marsh*, 71 A.2d 35 (N.J. 1950)).

Only two minority cases are sufficiently in point to require comment for the purpose of distinguishing them from the situation involved in the pending case. These two cases, *Danskin v. San Diego Unified School Dist.*, 28 Cal. 2d 536 (1946) and the recent case of *Lawson v. Housing Authority*, 70 NW 2d 605, will be hereafter noted.

This overwhelming weight of authority upholding these declaration requirements is invariably rested upon the established principle that government, having an inherent right to protect itself from subversion by force, violence or other unlawful means, can take such legislative action as is reasonably designed to prevent the eventual success of such

subversive conduct. Upon this principle both our federal and state governments have enacted laws making advocacy of governmental overthrow by force and violence a criminal offense and punishable as such. (Criminal Syndicalism Act of California, constitutionality affirmed in *Whitney v. Calif.*, 274 U.S. 357; *People v. Steelik*, 187 Cal. 361; The federal Smith Act, 54 U.S. Stat. 670; Chap. 439 (18 USC Sec. 2385), constitutionality affirmed in *Dennis v. U. S.*, 341 U.S. 494 (1951)).

In its most recent decision, *Dennis v. U.S.*, supra, the United States Supreme Court, reviewing its own earlier decisions in this field of law, has considered the origin, development and meaning of the "clear and present danger" rule in the light of realities occurring during recent years within and beyond our borders, and has concluded that this rule requires only that the court in each case determine "whether the gravity of the evil, discounted by its improbability, justifies any speech abridgment necessarily involved in the legislation before it."

In the *Dennis* case, involving prosecution of Communist defendants under the Smith Act, the court specifically held that it was proper for the trial judge (Judge Medina) to instruct the jury that if the defendants in fact advocated governmental overthrow by force and violence, not in the sense of mere abstract doctrine, but in the sense of active advocacy, then, *as a matter of law*, there was danger sufficiently clear and present to justify application of the statute, notwithstanding the freedom of speech provisions of the First amendment of the federal constitution.

Article XX, Section 19, of the California Constitution and Revenue and Taxation Code Section 32, involved in the pending case, impose a restriction upon the veterans' exemption which is couched in terms almost identical with the Smith Act, and, as in the *Dennis* case, the restriction

must be construed to mean advocacy of government overthrow by force and violence, not in the sense of mere discussion or mere abstract belief or opinion, but as a matter of active advocacy equivalent to potential conduct. The present legislation is not complicated by provisions concerning mere "beliefs" or mere "membership" in organizations. It applies only to personal advocacy.

In the light of the *Dennis* case, the point presented in the pending case is, not whether such active advocacy presents such a "clear and present danger" as to justify its proscription, but, rather, how far a legislature (or, as in this case, an electorate) may go, beyond direct criminal proscription of such advocacy, in an attempt to prevent or frustrate its success.

That mere direct criminal proscription is not the limit of permissible legislation is demonstrated by the authorities above cited, which uphold legislation requiring various loyalty declarations as a condition to certain public employments and certain political activities. However, such legislation is not necessarily limited to placing restrictions upon public employments and political activities. If a legislature finds that in fact other situations exist wherein such subversive advances will occur unless similar restrictions are imposed it should have power to impose them. The ruling principle is the test, rather than any particular factual situation, and the rule, and the reasons therefor, are broad enough to comprise situations other than public employments and political activities.

This brings us to the question whether entitlement to a veteran's exemption presents such a situation. In our approach to this question we may assume that there may be many situations wherein, although a possibility of subversive mischief exists, the evil must be discounted by its

improbability to such extent as to negate any justification, even for restriction upon criminal advocacy of subversion. We may even withhold approval, for purposes of argument, from those authorities which have upheld such restrictions as applied to the receipt of unemployment and housing benefits. We may also assume that the restrictions imposed by the constitutional and statutory provisions involved in the pending case could not be validly applied to other tax exemptions differing in kind and purpose from the veteran's tax exemption here involved.

The underlying purpose of the public policy of granting tax exemptions and other benefits to veterans has been considered and specifically stated by the Supreme Court of California in cases involving the legality of such grants. In *Veterans Welfare Board v. Riley*, 188 Cal. 607, 611 (1922) the court said: "The payment of a pension or a bonus for past services showing the gratitude of the people, showing that the state is mindful of those who have made sacrifices for it, is an incitement to patriotism and an encouragement to defend the country in future conflicts."

In *Allied Architects v. Payne*, 192 Cal. 431, 439 (1923), the court said. "While it is true that the return anticipated is incorporeal and intangible, it is nevertheless a very vital and valuable return to the state. The promotion and promulgation of patriotism upon which the state must rely for its own self-preservation is in truth and in fact a good consideration for the thing granted by the state and justifies the extending the bounty of the state."

In *Board of Directors v. Nye*, 8 Cal. App. 527, 541 (1908) the court said: "Nor is it to be said that such legislation is altogether in the nature of compensation for services performed . . . I think that those who performed that extraordi-



nary service for the government constitute a class, distinguished by a line clearly segregating them, not only from the general body of the people, but also from that other class entitled to be cared for, supported and maintained at the public expense."

These authorities make clear that veteran programs are directed to and subserve a specific, important and unique public purpose over and beyond the incidental, tangible benefits enjoyed by any individual veteran. Their aim is held to be "the promotion and promulgation of patriotism upon which government must rely for its own self-preservation." Only because they are thus purposed are they legally justifiable. Considered in their relation to possible governmental subversion by violence or other unlawful means, they are just as much designed as instrumentalities to forestall any such tendency as are, for example, a police department or the FBI. Only the method is different. The veteran program takes a positive, constructive approach, while the other must necessarily be negative, combative, restrictive.

Considered in this light, a veterans' program constrained to include within its bounty persons actively advocating subversion by force and violence, and support of enemies in time of hostilities, would be stultified, devitalized and defeated in its unique purposes.

Who can say that a veterans program in such sorry condition would not be in the long run more destructive of patriotic standards, more conducive to widespread cynicism, and more of a menace to governmental survival than would be the presence of some advocate of subversion in a lowly, relatively unimportant public clerkship? Yet that clerk can be, and is, required to take his loyalty oath. It is, therefore, an oversimplification of the issue to merely ask: "What

harm can result from allowing a few such advocates to enjoy a veteran's tax exemption?" Subversion can be as effectively advanced from psychological as from tactical causes.

The prevention of any such subversive advance must be deemed to have been the reason for the enactment by the people and the legislature of the provisions in question, at least in so far as they are applicable to the veterans' tax exemption program.

Precedent for such reasoning and policy may be found in the provisions of the federal veterans programs enacted by the Congress. Sec. 38 USCA, sec. 728, provides that the director of the Veterans Administration may forfeit the benefits of any veteran found by him to be guilty of treason, sabotage, or rendering assistance to an enemy.

It should be added that a veteran's exemption or other veteran's benefit is not a matter of natural or constitutional right. It is a privilege; and, although neither the electorate nor the legislature may impose discriminatory or otherwise invalid conditions within the limits of the privilege, certainly they may attach such conditions, applicable to all who seek to enjoy it, as are reasonably necessary to effectuate the purpose of the privilege or to prevent its frustration. (See *Hamilton v. U. S.*, 293 US 245.)

Therefore, having in mind the unique purpose of the veterans' exemption laws, and in view of the substantial reasons implicit in the legislation here involved, and in the further light of the presumption of its validity, it cannot be held as a matter of law that "the gravity of the evil, discounted by its improbability" is insufficient to justify whatever abridgement of speech, if any, is necessarily involved in the requirement of Const. Art. XX, Sec. 19, and Rev. & Tax. Code Sec. 32.

These enactments come to the courts "encased in the armor of previous legislative deliberation" (*Amer. Comm. v. Douds*, supra). It is presumed that the electorate and the legislature made inquiry to determine whether there was an evil to be remedied and that the enactments were based on the result of such inquiry. (*Re: Livingston*, 10 Cal. 2d 730.) All presumptions and intendments favor the validity of a statute, and mere doubt does not afford sufficient reason for a judicial declaration of invalidity. Statutes must be upheld unless their unconstitutionality clearly, positively and unmistakably appears. *Lockheed v. Sup. Ct.*, supra, at p. 484; *Cohen v. Wright*, supra, at p. 316-318. These guiding principles are particularly applicable in a court of first instance.

The case of *Danskin v. San Diego*, 28 Cal. 2d 536 (1946), relied upon in *Speiser v. Randall*, No. 60660 Superior Court of Contra Costa County (2-9-55), and also strongly relied upon by plaintiff herein, is, in our opinion, quite distinguishable. There the Civil Liberties Union applied for the use of a school auditorium for a meeting on the general theme of "The Bill of Rights in Post-War America", featuring well-known speakers. The school board, pursuant to a provision of the Education Code, withheld its permission for such use unless the applicants subscribed an oath to the effect that they did not advocate, and were not affiliated with any organization which advocated, government overthrow by force or violence. The court very properly held that the statute was not directed against the advocacy of revolutionary doctrines, but would have suppressed speech and assembly on any subject (italics ours) by the advocates of such doctrines or by those who were even merely affiliated with such advocates (p. 545.).

In the pending case the declaration requirement will not have the effect of preventing or limiting advocates of subversion from exercising their constitutional right to assemble and speak on permissible subjects, nor does it at all affect any speech or assembly rights except such as are necessarily involved in active, personal advocacy of subversion.

In *Lawson v. Housing Authority*, 70 NW 2d 605, a recent Wisconsin decision invalidating an oath requirement extending to membership in various alleged subversive organizations, the court took the view that occupancy of a housing project by such a person was not a threat to the successful operation of the project. In the pending case, however, we are of the opinion that allotment of veterans' bounties to persons actively advocating subversion and treason would be destructive of the unique purposes of a veterans' program.

Nor can it be fairly argued that legislation of this type is the result of some present day hysterical resort to novel restrictions upon personal liberty.

Aside from the recent decisions of the Supreme Court of the United States and of our own state, it should be noted that in 1863 our state Supreme Court, in *Cohen v. Wright* (22 Cal. 293) cited supra, held that a statutory requirement for a similar loyalty oath as a condition to the use of the courts, not only by attorneys but by litigants as well, was constitutional and valid in all respects. In 1889 the Supreme Court of the United States considered legislation similar in principle, and in *Davis v. Beason*, 133 US 333, 346, opinion written by Justice Field, it upheld a statute of the Idaho Territorial Legislature (which was subject to constitutional limitations) requiring that, as a condition to the exercise

of the right to vote, registrants must subscribe to an oath to the effect that they did not practice, counsel or advocate bigamy or polygamy. The court held that the legislation was not subject to any legal or constitutional objection.

All of the other constitutional objections raised by plaintiff herein, e.g., due process, equal protection, bill of attainder, vagueness and uncertainty have been so consistently and clearly resolved against him in the numerous cases heretofore cited that no further discussion as to those objections is necessary.

The further contention that Rev. & Tax. Code Section 32 is invalid for the reason that it applies in its terms only to property taxes (except householders' exemptions) and does not extend to other kinds of taxes that would be within the coverage of the broader constitutional provision, must also be resolved against plaintiff.

Article XX, Section 19, of the Constitution is clearly self-executing and is enforceable in the courts to its full extent even without legislation, notwithstanding its direction to the legislature to enact such laws as may be necessary for its enforcement. (See *Peo. v. Western Air Lines*, 42 Cal. 2d 621, 637-8; *Chesney v. Byram*, supra; *Sutter v. City Council of Sacramento*, 64 Cal. App. 2d 1, 4.) Revenue & Taxation Code Section 32 is merely a permissible procedural statute, requiring that in the case of claims for the exemption in respect to certain types of property taxes—certainly a reasonable classification—a declaration must be filed as a means of establishing eligibility. (See *Chesney v. Byram*, supra.)

The facts of this case having been the subject of stipulation, it is ordered that defendant prepare conclusions of law



and an appropriate judgment for defendant in accordance herewith.

Dated: Jul 25 1955

WM. T. SWEIGERT  
(William T. Sweigert)

*Judge*

[Endorsed:] Filed Jul 25 1955 Martin Mongan, Clerk.  
By J. F. Mitchell, Deputy Clerk.

**Appendix C**

*In the Supreme Court of the  
State of California*

In Bank—April 24, 1957

S. F. No. 193222

Lawrence Speiser,	Respondent,
vs.	
Justin A. Randall, as Assessor, etc.,	Appellant.

S. F. No. 193323

Lawrence Speiser,	Respondent,
vs.	
Mary Ellen Foley, as Assessor, etc.,	Appellant.

**OPINION**

SHENK, J.—This is an appeal by the defendants from a single judgment in two consolidated cases in which the common plaintiff, Lawrence Speiser, sought declaratory relief against the assessors of the county of Contra Costa and the city of El Cerrito located in that county to the effect that section 19 of article XX of the Constitution and section 32 of the Revenue and Taxation Code are invalid and that he is entitled to the veterans' property tax exemption provided for in section 11<sub>1</sub> of article XIII of the Constitution notwithstanding the provisions of those enactments.

The material facts in these two cases are the same and appear by stipulation of the parties in the trial court. The plaintiff is a resident of the city of El Cerrito and the county of Contra Costa. He meets all of the requirements for the veterans' tax exemption except that in his application for the tax year 1954-1955 he failed and refused to subscribe to the nonsubversive oath contained in the application form supplied by the assessors pursuant to article XX, section 19 of the Constitution and section 32 of the Revenue and Taxation Code. His applications were rejected. He thereupon commenced these actions for declaratory relief. The trial court held that the constitutional provisions and the code section were invalid as an infringement upon the right of free speech guaranteed by the federal Constitution, and that section 32 was invalid for the reason that in failing to require an oath from the members of all groups otherwise entitled to tax exemptions an unreasonable classification was imposed. The judgment ordered that the plaintiff be granted the exemption.

The contentions urged on appeal in these cases are the same as those presented in *Prince v. City & County of San Francisco*, [— P.2d —]. For reasons stated in the opinions in that case and in *First Unitarian Church of Los Angeles v. County of Los Angeles*, [— P.2d —] the defendants should have prevailed.

The judgment is reversed.

SCHAUER, J., SPENCE, J., and MCCOMB, J., concurred.

TRAYNOR, J. For the reasons stated in my dissenting opinion in *First Unitarian Church of Los Angeles v. County of Los Angeles*, [— P.2d —], I would affirm the judgment.

GIBSON, C. J., concurred.

CARTER, J. For the reasons stated in my dissenting opinion in *First Unitarian Church of Los Angeles v. County of Los Angeles*, [— P.2d —], I would affirm the judgment.

**Appendix D**

*In the Supreme Court of the  
State of California*

S. F. No. 19450

In Bank—April 24, 1957

Daniel Prince,

Appellant,

vs.

City and County of San Francisco,

Respondent.

**OPINION**

SHENK, J.—This is an appeal by the plaintiff from a judgment in favor of the defendant in an action to recover taxes paid under protest and for declaratory relief.

The plaintiff is a veteran of World War II and as such filed applications for and obtained tax exemptions from the defendant city and county for the tax years 1951-1952, 1952-1953 and 1953-1954, pursuant to the provisions of section 11 of article XIII of the Constitution. That section provides in its pertinent parts as follows: "The property to the amount of \$1,000 of every resident of this State who has served in the Army, Navy, Marine Corps, Coast Guard or Revenue Marine (Revenue Cutter) Service of the United States (1) in time of war, or (2) in time of peace, in a campaign or expedition for service in which a medal has been issued by the Congress of the United States, and in either case has received an honorable discharge therefrom, . . . shall be exempt from taxation. . . ."

On November 4, 1952, the Constitution was amended to add section 19 of article XX limiting the veterans' tax ex-

emption, as well as other tax exemptions, to those otherwise entitled who do not advocate the overthrow of the federal or state government by force and violence or the support of a foreign government in the event of hostilities against the United States, and authorizing implementation by legislation to effectuate the provisions of the constitutional amendment. Accordingly, on July 1, 1953 (Stats. 1953, ch. 1503, § 1, p. 3114) section 32 was added to the Revenue and Taxation Code providing that applications for tax exemptions must contain an oath as specified by that section. The constitutional amendment and the implementing legislation are the same as those set forth and considered in the opinion of this court in *First Unitarian Church of Los Angeles v. County of Los Angeles*, [— P.2d —].

On April 12, 1954, the plaintiff filed in the office of the assessor of the defendant city and county an application for a property tax exemption for the tax year 1954-1955. The application form furnished by the assessor contained, for the first time, the nonsubversive affidavit required by section 32 of the Revenue and Taxation Code. The plaintiff failed and refused to sign the application containing the oath. Facts were stipulated to which otherwise appear to entitle the plaintiff to the exemption. The application was denied. The plaintiff paid the tax under protest and commenced this action to recover the same. He claims that he is entitled to the exemption without compliance with the constitutional amendment and the statutory enactment passed in pursuance thereof. He contends that section 19 of article XX of the Constitution and section 32 of the Revenue and Taxation Code violate provisions of the state and federal Constitutions. In support of his contentions he argues that the provisions of our state law infringe upon various aspects of freedom of speech; that because section 32 of the Revenue and Taxation Code does not apply to all of those



entitled to tax exemptions it constitutes special legislation and he is denied due process and equal protection of the law, and that it fallaciously infers that those who do not sign the oath engage in the prohibited advocacy. It is also urged that the constitutional amendment is void because it embraces more than one subject.

In the case of *First Unitarian Church of Los Angeles v. County of Los Angeles*, [— P.2d —], this court declared the purposes of the constitutional amendment and its implementing legislation as applied to churches and held both enactments to be valid. The same reasons and conclusions apply to tax exemption claims by veterans provided for in section 11, of article XIII of the Constitution. Veterans traditionally have been selected by the states and by the nation for numerous special bounties and benefits. These are said to be, in part at least, in consideration for services in the public interest and welfare and as encouragement to others to follow their example. (See *Allied Architects' Assn. v. Paime*, 192 Cal. 431 [221 P. 209, 30 A.L.R. 1029]; *Veterans' Welfare Board v. Riley*, 188 Cal. 607, 611 [206 P. 631].) In the case of *First Unitarian Church of Los Angeles v. County of Los Angeles*, above referred to, it was held that the pursuit of such objectives by the state through the means employed in the constitutional amendment and implementing legislation does not in any way violate the right of free speech; that the classifications imposed are reasonable and proper; that they do not violate any constitutional provision, and that the oath requirement of section 32 of the Revenue and Taxation Code is valid. That case is controlling here. The further contention that section 32 fallaciously infers that those who do not subscribe to the oath engage in the prohibited activity is without merit. The Legislature may properly require that a claimant perfect his

application for a property tax exemption by compliance with reasonable regulations in implementation of section 11 $\frac{1}{2}$  of article XIII of the Constitution. (*Chesney v. Byram*, 15 Cal. 2d 460, 465 [101 P.2d 1106].) Finally, the plaintiff's contention that the constitutional amendment violates section 24 of article IV of the Constitution, which provides that "Every act shall embrace but one subject, which subject shall be expressed in its title," is also without merit. Article IV of the Constitution deals with the "Legislative Department" and section 24 is intended to be and has been limited to legislative enactments under the Constitution. (See *McClure v. Riley*, 198 Cal. 23, 26 [243 P. 429]; *Ex parte Haskell*, 112 Cal. 412, 421 [44 P. 725, 32 L.R.A. 527].)

No good reason appears why veterans should not be required to comply with the same reasonable regulations and conditions provided by section 32 of the Revenue and Taxation Code as are applied to all other included tax exemption claimants.

The judgment is affirmed.

SCHAUER, J., SPENCE, J., and McCOMB, J., concurred.

TRAYNOR, J., Dissenting.—For the reasons stated in my dissenting opinion in *First Unitarian Church v. County of Los Angeles*, [ — P.2d — ], I would reverse the judgment.

GIBSON, C. J., concurred.

CARTER, J., Dissenting.—For the reasons stated in my dissenting opinion in *First Unitarian Church of Los Angeles v. County of Los Angeles*, [ — P.2d — ], I would reverse the judgment.

**Appendix E**

*In the Supreme Court of the  
State of California*

L.A. No. 23847.

In Bank—April 24, 1957

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First Unitarian Church of Los Angeles  
(a corporation).

Appellant,

vs.

County of Los Angeles et al.,

Respondents.

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**OPINION**

SHENK, J.—This is an appeal from a judgment for the defendants following an order sustaining a general demurrer to the complaint without leave to amend.

The action was brought to recover taxes paid under protest and for declaratory relief. The plaintiff is a duly organized nonprofit religious organization with its principal office in the city of Los Angeles. It is the owner of real property devoted exclusively to religious purposes and located within the jurisdiction of, and subject to property taxation by, the county and city of Los Angeles. It presented to the assessor of Los Angeles County an application for the exemption of its property, particularly described, for the fiscal year 1954-1955. The application was denied by the assessor on the ground that the plaintiff had not qualified for an exemption because it had failed and refused to include in the application for exemption the nonsubversive

declarations required by section 32 of the Revenue and Taxation Code. The application was otherwise complete. Thereafter the real property of the plaintiff was assessed as property not exempt, and within the time prescribed by law the plaintiff paid the tax under protest and brought this action for the recovery of the sum so paid. The assessor refused to allow the exemption because of the provisions of section 19 of article XX<sup>1</sup> of the Constitution<sup>1</sup> and section 32 of the Revenue and Taxation Code.<sup>2</sup>

Section 19 of article XX was adopted at the general election on November 4, 1952, and was placed as a new section in that article under the heading "Miscellaneous Subjects." The section reads:

"Section 19. Notwithstanding any other provision of this Constitution, no person or organization which advocates the overthrow of the Government of the United States or the State by force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall:

"(a) Hold any office or employment under this State; including but not limited to the University of California, or with any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State; or

"(b) Receive any exemption from any tax imposed by this State or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this state.

"The Legislature shall enact such laws as may be necessary to enforce the provisions of this section." (Stats. 1953.)

<sup>1</sup>Hereinafter referred to as section 19 of article XX.

<sup>2</sup>This and all other code sections hereinafter referred to will be to sections of the Revenue and Taxation Code unless otherwise indicated.

Following the amendment to the Constitution section 32 was added to the Revenue and Taxation Code in 1953. It is as follows:

"Any statement, return, or other document in which is claimed any exemption, other than the householder's exemption, from any property tax imposed by this State or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State shall contain a declaration that the person or organization making the statement, return, or other document does not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means nor advocate the support of a foreign government against the United States in event of hostilities. If any such statement, return, or other document does not contain such a declaration, the person or organization making such statement, return, or other document shall not receive any exemption from the tax to which the statement, return, or other document pertains. Any person or organization who makes such declaration knowing it to be false is guilty of a felony. This section shall be construed so as to effectuate the purpose of Section 19 of Article XX of the Constitution." (Stats. 1953, p. 3114.)

The plaintiff contends that both the constitutional provision and the code section are invalid. It is argued that the imposition and collection of taxes sought to be recovered and the denial of the church property tax exemption provided for in section 11 $\frac{1}{2}$  of article XIII of the Constitution, as applied to the plaintiff church and all other churches similarly situated, was and is in violation of the provisions of the state and federal Constitutions which require reasonable and proper classifications for purposes of taxation and provide for freedom of religion, freedom of speech and the



protection of other rights specified in the protest a copy of which is attached to and made a part of the complaint. The provisions of the protest will be referred to later on in this opinion.

It is noted that section 19 of article XX does not specifically mention churches or any other organizations or individuals which are subject to its provisions. Its terms are general and apply to all owners of property as to which exemption from taxation might be claimed.

It is fundamental that the payment of taxes has been and is a uniform if not a universal demand of government, and that there is an obligation on the part of the owner of property to pay a tax legally assessed. An exemption from taxation is the exception and the unusual. To provide for it under the laws of this state requires constitutional or constitutionally authorized statutory authority. It is a bounty or gratuity on the part of the sovereign and when once granted may be withdrawn. It may be granted with or without conditions but where reasonable conditions are imposed they must be complied with.

A church organization is in no different position initially than any other owner of property with reference to its obligations to assist in the support of government by the payment of taxes. Church organizations, however, throughout the history of the state, have been made special beneficiaries by way of exemptions. A brief reference to the constitutional and statutory background relating to this and other exemptions in this state will be made.

We find in the Constitution of 1849 the following provisions: "Taxation shall be equal and uniform throughout the state. All property in this state shall be taxed proportion to its value, to be ascertained as directed by law. . . ." (Laws of California, 1850-1853, p. 57, art. XI, § 13.) No provision

for exemption from taxation is found in that Constitution. In 1853 the Legislature passed an act entitled "*An Act to provide Revenue for the Support of the Government of this State.*" (Laws of California, 1850-1853, p. 669.) In section 1 of article I it was provided that all land in the state owned or claimed by any person or corporation shall be listed for taxation. In section 2 of the same article it was provided that "The following property shall not be listed for taxation." Then follow several paragraphs where numerous classifications of property are named, such as publicly owned property, town halls, public squares, colleges, school-houses, public hospitals, asylums, poorhouses, cemeteries and graveyards. In paragraph 5 it was provided that the following also shall not be listed for taxation: "Churches, chapels, and other buildings for religious worship, with their furniture and equipments, and the lots of ground appurtenant thereto and used therewith, so long as the same shall be used for that purpose only." (Laws of California, 1850-1853, p. 671.)

This statutory method of providing for exemptions continued until the adoption of the Constitution of 1879. Section 1 of article XIII of the new Constitution required constitutional authority for exemptions. It was there provided that "All property in this State except as otherwise in this Constitution provided, . . . shall be taxed in proportion to its value, to be ascertained as provided by law. . . ." In subsequent sections of the same article the exemption of numerous classes of particularly described property is provided for. Section 11 $\frac{1}{2}$  of article XIII provides for the church exemption as follows: "All buildings, and so much of the real property on which they are situated as may be required for the convenient use and occupation of said buildings, when the same are used solely and exclusively for religious worship . . . shall be free from taxation. . . ."

In 1944 section 1c was added to article XIII which provides that "In addition to such exemptions as are now provided in this Constitution, the Legislature may exempt from taxation all or any portion of property used exclusively for religious, hospital or charitable purposes . . ." This provision did not have the effect of changing existing laws with reference to the exemption of church property except to authorize the Legislature to extend the exemption of that property as provided for in section 11 $\frac{1}{2}$  of article XIII to its personal property. Whether that section is self-executing is of no concern for in 1903 the Legislature added section 3611 to the Political Code, repeating the constitutional language which exempted church real property and providing among other things that "any person claiming property to be exempt from taxation under this section shall make a return thereof to the assessor annually, the same as property is listed for taxation, and shall accompany the same by an affidavit showing that the building is used solely and exclusively for religious worship, and that the described portion of the real property claimed as exempt is required for the convenient use and occupation of such building. . . ." (Stats. 1903, p. 21.) The reference in that section to property which "is listed for taxation" was in contemplation of section 8, article XIII of the Constitution, which has provided since 1879 that "The Legislature shall by law require each taxpayer in this State to make and deliver to the county assessor, annually, a statement, under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control, at 12 o'clock meridian, on the first Monday of March."

Section 3611 of the Political Code was carried in to the Revenue and Taxation Code in 1939 as section 254, which

provides that any "person claiming the church . . . exemption shall make a return of the property to the assessor annually, the same as property is listed for taxation, and shall accompany it by an affidavit, giving any information required by the" State Board of Equalization. The form prescribed by the State Board of Equalization includes the nonsubversive portion of the affidavit, which the plaintiff has refused to include in its return.

No meritorious argument has been or can be advanced to the effect that section 19 of article XX is not a valid enactment under state law or that it is inapplicable to the church property exemption provided for in section 11½ of article XIII. Section 19 of article XX was adopted in accordance with the procedures required by the Constitution for an amendment to that document by vote of the electors of this state. Its provisions are plain and unambiguous and require no interpretation in the matter of their prohibitions. In direct terms it provides that no person or organization included in the proscribed class shall receive an exemption from any tax imposed by the state or any taxing agency of the state. It applies to all tax exemption claimants. Its prohibitions are declared by its own terms and are mandatory and prohibitory. (Const., art. I, § 22.) By its enactment the people of the state declared the public policy of withholding from the owners of property in this state who engage in the prohibited activities the benefits of tax exemption. The denounced activities are criminal offenses under state law, (Stats. 1919, p. 281), and the act of Congress known as the Smith Act (54 Stat. 670) makes it unlawful to advocate the overthrow of the government by force and violence.

It may properly be said that the primary purpose of the people of the state in the enactment of section 19 of article

XX was to provide for the protection of the revenues of the state from impairment by those who would seek to destroy it by unlawful means. It contains no exceptions. It applies to churches when it provides that "Notwithstanding any other provisions of this Constitution" its prohibitions shall apply to all tax exemption claimants, and declares in effect that the tax revenues of the state shall not be depleted by those who would seek to destroy it in violation of the criminal laws of the state and the nation. It is clear that section 19 of article XX is a valid enactment under the Constitution of the state. That it was properly incorporated in the Constitution as a matter of state policy may not be questioned.

It is then to consider whether section 32 is a valid implementation of section 19 of article XX. Section 32 declares that "This section shall be construed so as to effectuate the purpose of Section 19 of article XX of the Constitution." Notwithstanding the fact that a particular provision may be self-executing, legislation enacted in aid thereof is not invalid. (*Chesney v. Byram*, 15 Cal. 2d 460, 463 [101 P.2d 1106].) The Code section declares within itself its purpose but that purpose is obvious without the declaration.

The plaintiff contends that section 32 is void for several reasons. First, because of the exception from its requirements of householders who are entitled to an exemption of \$100 of assessed value of their personal property as provided for in section 101 $\frac{1}{2}$  of article XIII of the Constitution. It is contended that this exception renders the section lacking in uniformity and thus provides for an unlawful classification of taxable property under the law. Secondly, that it violates the federal constitutional guarantees of separation of church and state and freedom of speech. The first contention will be considered in advance of the others for



the reason that it involves the application of the Constitution and laws of the state relating to taxation.

If it be assumed for the moment that section 32 is invalid for any of the reasons stated, still the plaintiff, under the general provisions of state law, is not relieved from its obligation otherwise to disclose the facts required by section 32. In this connection the powers and duties of the assessor and the obligations of the plaintiff as the owner of real and personal property must be considered in the light of state law. Those powers, duties and obligations are set forth generally in the Revenue and Taxation Code.

It is the duty of the assessor to see that all property within his jurisdiction is legally assessed and that exemptions are not improperly allowed. He is liable on his bond "for all taxes on property which is unassessed through his wilful failure or neglect." (§ 1361.) By section 441 it is provided in accordance with section 8 of article XIII of the Constitution that "Every person shall file a written property statement, under oath, with the assessor between noon on the first Monday in March and 5 p. m. on the last Monday in May, annually, and within such time as the assessor may appoint. At any time, as required by the assessor for assessment purposes, every person shall furnish information or records for examination." For use by the assessor and the property owner the State Board of Equalization is required to prepare the forms of blanks for the property statement. (§ 452.) The assessor may subpoena and examine any person in relation to any statement furnished by him. (§ 454.) Any person who wilfully states to the assessor anything which he knows to be false, in any oral or written statement, even not under oath, but required or authorized to be made and relating to an assessment, is guilty of a misdemeanor. (§ 461.) Section 462 provides that every person is guilty of a

misdeemeanor who, after proper demand by the assessor, refuses to give the assessor a list of his taxable property or "Refuses to swear to the list." By section 463 it is provided, among other things, that every person shall forfeit \$100 to the people of the state, to be recovered by action brought in their name by the assessor, for each refusal to furnish the property statement or to fail to appear and testify when requested to do so by the assessor.

It thus appears that under the tax laws of the state wholly apart from section 32 it is the duty of the assessor to ascertain the facts with reference to the taxability or exemption from taxation of property within his jurisdiction. And it is also the duty of the property owner to cooperate with the assessor and assist him in the ascertainment of these facts by declarations under oath.

With particular reference to the many and various tax exemptions, the Revenue and Taxation Code provides for the ascertainment of the facts as a prerequisite for exemptions. Those facts in many instances must be made known to the assessor by the affidavit of the tax exemption claimant. They include, among others, veterans exemptions, church exemptions, welfare exemptions, college exemptions and orphanage exemptions. In the case of the church exemption the affidavit shall give "any information required" to carry the exemption into effect. (§ 254.) It is significant to note that nowhere in the law of the state is there a requirement for the property owner to make a showing for tax exemptions in the case of householders, cemeteries, game refuges and a few others. It thus appears that the Legislature in addition to the exception of householders from the requirements of section 32 has made no requirement otherwise for any showing on their part of their right to the exemption, either by affidavit or otherwise. If the exclusion of house

holders from the requirement of section 32 renders that section void as discriminatory or lacking in uniformity it would seem to follow that the entire Revenue and Taxation Code with reference to procedures to qualify for exemptions would be void for the same reason. But obviously no such claim is made.

As stated it is the duty of the assessor to see that exemptions are not allowed contrary to law and this of course includes those which are contrary to the prohibitions provided for in section 19 of article XX. With the aid of section 32 his task is facilitated by the means therein supplied. Without that aid he is nevertheless required to ascertain the facts with reference to tax exemption claimants. Those facts may be disclosed in several different ways. In the instances in which he is without the assistance or cooperation of the tax exemption claimant and he is relegated to his own devices in discovering the facts he may do so by the examination under oath of the exemption claimant. (§ 454.) If he is satisfied from his investigations that the exemption should not be allowed he may assess the property as not exempt and if contested compel a determination of the facts in a suit to recover the tax paid under protest. In such a case it would be necessary for the claimant to allege and prove facts with reference to the nature, extent and character of the property which would justify the exemption and compliance with all valid regulations in the presentation and prosecution of the claim. In any event it is the duty of the assessor to ascertain the facts from any legal source available. In performing this task he is engaged in the assembly of facts which are to serve as a guide in arriving at his conclusion whether an exemption should or should not be allowed. That conclusion is in no wise a final determination that the claimant belongs to a class proscribed by section

19 of article XX or is guilty of any activity there denounced. The presumption of innocence available to all in criminal prosecutions does not in a case such as this relieve or prevent the assessor from making the investigation enjoined upon him by law to see that exemptions are not improperly allowed. His administrative determination is not binding on the tax exemption claimant but it is sufficient to authorize him to tax the property as nonexempt and to place the burden on the claimant to test the validity of his administrative determination in an action at law. For the obvious purpose, among others, of avoiding litigation, the Legislature, throughout the years has sought to relieve the assessor of the burden, on his own initiative and at the public expense, of ascertaining the facts with reference to tax exemption claimants. In addition to the means heretofore and otherwise provided by law the Legislature, with special reference to the implementation of section 19 of article XX, has enacted section 32. That section provides a direct, time saving and relatively inexpensive method of ascertaining the facts. The Legislature could take these factors into consideration. It could also take into account the fact that the segment of householders in this state is so overwhelmingly large as compared with others chosen for exemptions that the cost of processing them would justify their separate classification. Where any state of facts can be reasonably conceived which would sustain legislative classification the existence of those facts will be presumed. (*Leland v. Lowery*, 26 Cal. 2d 224, 232-233 [157 P.2d 639, 175 A.L.R. 1109].) Furthermore, aside from the power of the Legislature to classify for the purpose of general legislation (see *Reclamation District v. Riden*, 192 Cal. 147, 156 [218 P. 762]; 24 Cal. Jur. 432) there is another and more conclusive reason why it may classify the personal property of house

holders. Section 14 of article XIII of the Constitution was amended in 1933 to provide that the Legislature "shall have the power to provide for the assessment, levy and collection of taxes upon all forms of tangible personal property . . . may classify any and all kinds of personal property for the purposes of assessment and taxation in a manner and at a rate or rates in proportion to value different from any other property in this State subject to taxation and may exempt entirely from taxation any or all forms, types or classes of personal property." Of this constitutional provision this court said in *Rock v. County of Orange*, 32 Cal. 2d 280 at pages 283-284 [196 P.2d 550]: "Article XIII of the California Constitution as first adopted provided for a uniform property tax upon real and personal property alike. This requirement of uniform taxation of real and personal property, however, has been abandoned by subsequent amendments. Under these amendments the Legislature may classify personal property for purposes of taxation or exempt all personal property or any form, type, or class thereof," and on page 285 the court declared that this authorization to the Legislature to classify tangible personal property is "all inclusive" and covers "all forms" of tangible personal property. The personal property of the householders falls within the kind of personal property which the Legislature was constitutionally authorized to classify for purposes of taxation.

There is therefore no merit in the plaintiff's contention that the exception of householders from the requirements of section 32 renders that section invalid. There is likewise no merit in the contention that the section is invalid because of the failure of the Legislature to include within its requirements those who are entitled to exemptions under income tax laws and numerous other tax laws wherein certain exemptions are taken into consideration in arriving at the



amount of the tax to be paid. Those taxes are in categories which are subject to different treatment by separate classification. The Legislature is at liberty to select one phase of a problem for appropriate action without the necessity of including all others which might be affected in the same field of legislation. (*Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 489 [75 S.Ct. 461, 99 L.Ed. 563], and cases there cited.) Section 32 applies to all exemption claimants to which it relates and supplies appropriate means for carrying out the purposes of section 19 of article XX. The foregoing application of tax laws of the state is peculiarly a matter of state concern. (*Chanler v. Kelsey*, 205 U.S. 466 [27 S.Ct. 550, 51 L.Ed. 882]; *Orr v. Gilman*, 183 U.S. 278 [22 S.Ct. 213, 46 L.Ed. 196]; 24 Cal. Jur. 434-435.)

We turn now to the question of the validity of the constitutional amendment and implementing legislation under guarantees of the federal Constitution. We approach this phase of the case in the light of the fact that section 19 of article XX prescribes no penal sanctions and in a governmental sense may be deemed merely a declaration of state policy with reference to its own tax structure. However, the plaintiff has taken the position that this constitutional provision is in reality an unlawful limitation on its constitutional rights which are protected by the federal Constitution. This question is extensively argued on behalf of the plaintiff.

It is claimed that section 19 of article XX imposes an unconstitutional condition on the right to a tax exemption in that it violates the First and Fourteenth Amendments of the federal Constitution which prohibit, among other things, the making of any law "respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." (See *McCullum v. Board of Education*, 333 U.S. 203, 210 [68

S.Ct. 461, 92 L.Ed. 649, 2 A.L.R. 2d 1338]; *Cantwell v. Connecticut*, 310 U.S. 296 [60 S.Ct. 900, 84 L.Ed. 1213, 128 A.L.R. 1352].)

Without the slightest doubt the First Amendment reflects the philosophy that church and state should be kept separate. (*Zorach v. Clauson* (1952), 343 U.S. 306, 312 [72 S.Ct. 679, 96 L.Ed. 954]; *Everson v. Board of Education*, 330 U.S. 1, 59 [67 S.Ct. 504, 91 L.Ed. 711, 168 A.L.R. 1392].) However, the First Amendment embraces two concepts,—freedom to believe and freedom to act. The first is an absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society. . . ." (*Cantwell v. Connecticut*, *supra*, 310 U.S. 296, 303-304; see also *United States v. Ballard*, 322 U.S. 78, 86 [64 S.Ct. 882, 88 L.Ed. 1148].) In the present case it is apparent that the limitation imposed by section 19 of article XX as a condition of exemption from taxation, is not a limitation on mere belief but is a limitation on action—the advocacy of certain proscribed conduct. What one may merely believe is not prohibited. It is only advocates of the subversive doctrines who are affected. Advocacy constitutes action and the instigation of action, not mere belief or opinion. (See *Gillow v. New York*, 268 U.S. 652 [45 S.Ct. 625, 69 L.Ed. 1138]; *Leubuscher v. Commissioner of Int. Rev.*, 54 F.2d 998, 999.)

We are concerned then, not with the freedom to believe, but with the limited freedom to act. The exercise of religious activity has long been recognized as subject to some limitation if that exercise is deemed detrimental to society. In *Reynolds v. United States*, 98 U.S. 145 [25 L.Ed. 244], the plaintiff was a church member and a conscientious practitioner of its established doctrine which encouraged polygamy. The Supreme Court in holding that such religious activity was subject to legislative limitations, stated at page

167 that to permit exceptions based on religious doctrine "would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances." (See also *Cleveland v. United States*, 329 U.S. 14 [67 S.Ct. 13, 91 L.Ed. 12]; *Prince v. Massachusetts*, 321 U.S. 158 [64 S.Ct. 438, 88 L.Ed. 645].) There are decisions wherein statutory provisions having some effect on religious activity have been upheld on the ground that their effect was only incidental. In *Zorach v. Clauson* (1952), *supra*, 343 U.S. 306, the Supreme Court sustained the New York "released time" statutory provisions whereby public schools were permitted to release children for religious purposes during a part of the normal school day. Contentions were made to the effect that those provisions prohibited the "free exercise" of religion or were "respecting an establishment of religion" within the meaning of the First Amendment. The court concluded at pages 312-313 that the First Amendment "studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one on the other. That is the common sense of the matter. Otherwise the state and religion would be aliens to each other—hostile, suspicious, and even unfriendly. Churches could not be required to pay even property taxes. Municipalities would not be permitted to render police or fire protection to religious groups. Policemen who helped parishioners into their places of worship would violate the Constitution. Prayers in our legislative halls; the appeals to the Almighty in the messages of the Chief Executive; the proclamations making Thanksgiving Day a holiday; 'so help me God' in our courtroom oaths—these and all other references to the Almighty that run through our laws, our public rituals, our ceremonies would

be flouting the First Amendment. . . . We would have to press the concept of separation of Church and State to those extremes to condemn the present law on constitutional grounds."

In the present case there is nothing in the new enactments, either constitutional or statutory, which interferes with the free exercise of religion. The plaintiff is affected not because it is a religious organization but because it is a taxpayer favored in the law by an exemption for which it has refused to qualify. The plaintiff has failed to point out what tenet or doctrine of its faith is infringed upon by compelling it to qualify for the exemption. Those tenets and doctrines are set forth in a document attached to the protest of the payment of its taxes and is made a part of the complaint. It announces to the world the plaintiff's high principles and purposes. The prohibited activity cannot, with any reason whatsoever, be consistent with or be tolerated by the religious doctrines there published and subscribed to by the plaintiff. As against a claim that such advocacy might be included within religious teaching, the Supreme Court has disposed of the contention. In *Murdock v. Pennsylvania*, 319 U.S. 105 [63 S.Ct. 870, 891, 87 L.Ed. 1292, 146 A.L.R. 81], the court stated at page 109 that "we do not intimate or suggest . . . that any conduct can be made a religious rite and by the zeal of the practitioners swept into the First Amendment. *Reynolds v. United States*, 98 U.S. 145, 161-167 [25 L.Ed. 244], and *Davis v. Beason*, 433 U.S. 333 [10 S.Ct. 299, 33 L.Ed. 637] denied any such claim to the practice of polygamy and bigamy. Other claims may well arise which deserve the same fate." In *Davis v. Beason*, cited in the *Murdock* case, the court said of the advocacy of plural marriages: "To call their advocacy a tenet of religion is to offend the common sense of mankind. . . . The term 'religion' has refer-

ence to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of his obedience to His will. . . . It is assumed by counsel of the petitioner, that because no mode of worship can be established or religious tenets enforced in this country, therefore any form of worship may be followed and any tenets, however destructive of society, may be held and advocated, if asserted to be a part of the religious doctrines of those advocating and practising them. But nothing is further from the truth. . . . It does not follow that everything which may be so called can be tolerated. Crime is not the less odious because sanctioned by what any particular sect may designate as religion." As above noted the advocacy of the conduct prohibited has been made criminal by Congress (Smith Act, 54 Stat., part I, p. 670 [1940]), and through numerous statutory provisions by state legislatures it is well established that such advocacy is against local public policy. (See Levering Act, Stats. 1951 [3d Ex. Sess. 1950, ch. 7], p. 15.) In upholding the validity of the Levering Act this court in *Pockman v. Leonard*, 39 Cal. 2d 676 [249 P.2d 267], stated that the oath required there and similar in effect to the present one, was "obviously not a test of religious opinion."

It is further claimed by the plaintiff that section 32 imposes unconstitutional limitations upon the exercise of religion. As possibly affecting religion, section 32, in addition to the limitations imposed by the Constitution, requires the making of an oath. Since this oath is "obviously not a test of religious opinion" the plaintiff is not excused from making it any more than any other taxpayer. It appears that an oath was subscribed on behalf of the plaintiff by one of its officers when it filed its affidavit with the claim for exemption and its complaint in this action was also verified



on its behalf. If the making of the oath is objectionable to the plaintiff it must be for reasons relating to the content of the particular oath and not merely because it is an oath. This contention, therefore, may not be sustained.

It is also claimed that section 19 of article XX is a restriction on freedom of speech. The phrase "freedom of speech" is helpful in bringing to mind the concept which it means to convey, but as is often the case such a descriptive phrase assumes a literal meaning which causes difficulty and confusion in the development of the law surrounding it. Justice Holmes aptly stated that it "is one of the misfortunes of the law that ideas become encysted in phrases and thereafter for a long time cease to provoke further analysis." (See *Hyde v. United States*, 225 U.S. 347, 390 [32 S.Ct. 793, 56 L.Ed. 1114, 1135]; see also Corwin, *Bowing Out "Clear and Present Danger,"* 27 Notre Dame Lawyer 325.)

Despite the fact that the First Amendment is cast in terms of the absolute it is not to be applied literally. There never has been an absolute right of free speech or an unqualified liberty to speak. "Speech" in the broad sense embodies all means of expression and communication. It is the primary vehicle by which individuals and organizations converse and transmit ideas, information and knowledge, and is deserving of the highest degree of protection and preservation. But there are other important interests of society which, at times, may conflict with the interest of individuals or groups in the exercise of this asserted freedom. In such circumstances the courts must declare when the individual or group does or does not have a right to speak freely, depending on a balance of the individual's right to speak out as against the harm or injury society may suffer as a result of such speech. The courts have been called upon to engage in this weighing process in many instances. Illustrative are those

which protect society from a breach of the peace (*Chaplinsky v. New Hampshire*, 315 U.S. 568 [62 S.Ct. 766, 86 L.Ed. 1031]), "loud and raucous" noises caused by sound trucks (*Kovacs v. Cooper*, 336 U.S. 77 [69 S.Ct. 448, 93 L.Ed. 513, 10 A.L.R. 2d 608]), interruption of the free flow of commerce (*American Communications Assn. v. Douds*, 339 U.S. 382 [70 S.Ct. 674, 94 L.Ed. 925]) and the like.

The standard by which the various interests have been balanced has, until recently, been the so-called "clear and present danger" test. It was heretofore declared that the right to free speech could be infringed upon only in situations where it appeared that the "words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils" sought to be repressed. (*Schenck v. United States*, 249 U.S. 47, 52 [39 S.Ct. 247, 63 L.Ed. 470].) However, in *Dennis v. United States*, 341 U.S. 494 [71 S.Ct. 857, 95 L.Ed. 1137], the Supreme Court, reviewing its earlier decisions in this field, reconsidered the test in the light of existing and recognized realities and in conclusion stated: "Chief Judge Learned Hand, writing for the majority below, interpreted the phrase as follows: 'In each case [courts] must ask whether the gravity of the "evil" discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger.' 183 F.2d at 212. We adopt this statement of the rule. As articulated by Chief Judge Hand, it is as succinct and inclusive as any other we might devise at this time. It takes into consideration those factors which we deem relevant, and relates their significances. More we cannot expect from words." By that statement of the test the standard by which a weighing of interests is to be made is clearly indicated.

The interest of the state in protecting its revenue raising program from subversive exploitation has already been considered. There are additional interests with which the state is concerned and which it is attempting to promote by granting exemptions from taxation. Included is the interest of the state in maintaining the loyalty of its people and thus safeguarding against its violent overthrow by internal or external forces. This legitimate objective is sought to be accomplished by placing in a favored economic position, and thus to promote their well being and sphere of influence, those particular persons and groups of individuals who are capable of formulating policies relating to good morals and respect for the law. It has been said that when church properties are exempted from taxation "it must be because, apart from religious considerations, churches are regarded as institutions established to inculcate principles of sound morality, leading citizens to a more ready obedience to the laws." (*County of Santa Clara v. Southern Pac. R. Co.*, 18 F. 385, 400 [9 Sawy. 165]; 24 Cal. Jur. 405.) The same may be said of others enjoying tax exemptions, notably veterans (art. XIII, § 11 $\frac{1}{2}$ ; *Allied Architects Assn. v. Paune*, 192 Cal. 431 [221 P. 209, 30 A.L.R. 1029]; *Veterans' Welfare Board v. Riley*, 188 Cal. 607, 611 [206 P. 631]), colleges (art. XIII, § 1a) and charitable organizations (art. XIII, § 1c) which, together with church groups, occupy positions whereby they may exert a salutary influence on the moral well-being of the community. Encouragement to loyalty to our institutions and an incentive to defend one's country in the event of hostilities are doctrines which the state has plainly promulgated and intends to foster. It is the high purpose residing in its people that the state is attempting to encourage in its endeavor to protect itself against subversive infiltration. The propriety of that objective is recognized by the

Supreme Court in the Dennis case (*Dennis v. United States, supra*, 341 U.S. 494) where it said at page 509: "Overthrow of the Government by force and violence is certainly a substantial enough interest for the Government to limit speech. Indeed, this is the ultimate value of any society, for if a society cannot protect its very structure from armed internal attack, it must follow that no subordinate value can be protected."

Obviously, a program of tax exemption designed to promote adherence to the principles of our government but constrained to include within its bounty persons or organizations actively advocating subversion and the support of enemies in time of hostilities, would be wholly without reason and result in its own defeat.

The test requires further that consideration be given not only to the "gravity of the 'evil'" sought to be repressed but that the evil be "discounted by its improbability." The Dennis case involved the validity of the Smith Act which prohibited and made criminal the advocacy of the activities denounced by the people of this state in its Constitution. In speaking of the imminence of the threat posed by the advocacy of subversive activities, the court at page 509 stated: "If Government is aware that a group aiming at its overthrow is attempting to indoctrinate its members and to commit them to a course whereby they will strike when the leaders feel the circumstances permit, action by the Government is required. . . . Certainly an attempt to overthrow the Government by force, even though doomed from the outset because of inadequate numbers or power of the revolutionists, is a sufficient evil for Congress to prevent." In that case the court upheld an instruction to the jury that if the defendants actively advocated governmental overthrow by force and violence as speedily as circumstances would per-

mit, then as a "matter of law . . . there is sufficient danger of a substantive evil that the Congress has a right to prevent to justify the application of the statute under the First Amendment of the Constitution." In the present case the constitutional provision is concerned with those who advocate the same prohibited activity. It must be said that such advocacy from whatever source poses a threat to our government and that the gravity of the evil is not to be materially discounted by its improbability within the meaning of the test employed in the Dennis case.

Against the fundamental interest sought to be safeguarded by the state it is necessary to consider and balance the interest of those who assert that their right to speak has been unduly limited. From what has heretofore been said it is apparent that the limitation on speech is a conditional one, imposed only if a tax exemption is sought; that the prohibited advocacy is penal in nature, and that not one of the fundamental guarantees but only a privilege or bounty of the state is withheld if the exemption claimant prefers to engage in the prohibited criminal advocacy. It is obvious, therefore, that by no standard can the infringement upon freedom of speech imposed by section 19 of article XX be deemed a substantial one.

Apart from considerations involving the constitutional amendment the additional requirement of an oath imposed by section 32, of and by itself, gives no cause for the plaintiff to complain that it is improperly deprived of constitutional freedoms where compliance with the oath requirements otherwise may properly be imposed. (*Cheesney v. Byram*, *supra*, 15 Cal. 2d 460, 465-468.)

Statutory limitations on the free exercise of speech similar in nature to the present limitation have been imposed as valid conditions upon which some privilege, benefit or conditional right has been withheld by a state. For example, as



a condition to obtaining or maintaining employment state employees have been required to subscribe to oaths which declare their nonadvocacy of subversive activities (*Pockman v. Leonard*, *supra*, 39 Cal. 2d 676); as have county employees (*Hirschman v. County of Los Angeles*, 39 Cal. 2d 698 [249 P.2d 287, 250 P.2d 145]; *Steiner v. Darby*, 88 Cal. App. 2d 481 [199 P.2d 429]), municipal employees (*Garner v. Board of Public Works of Los Angeles*, 341 U.S. 716 [71 S.Ct. 909, 95 L.Ed. 1317], affirming *Garner v. Board of Public Works*, 98 Cal. App. 2d 493 [220 P.2d 958]), public school teachers (*Adler v. Board of Education*, 342 U.S. 485 [72 S.Ct. 380, 96 L.Ed. 517, 27 A.L.R. 2d 472]; *Steinmetz v. California State Board of Education*, 44 Cal. 2d 816 [285 P.2d 617]; *Board of Education v. Eisenberg*, 129 Cal. App. 2d 732 [277 P.2d 943]; *Board of Education v. Wilkinson*, 125 Cal. App. 2d 100 [270 P.2d 82]), and candidates for public offices (*Gerende v. Baltimore etc. Board of Elections*, 341 U.S. 56 [71 S.Ct. 565, 95 L.Ed. 745]; *Shub v. Simpson*, 196 Md. 177 [76 A.2d 332]). The right to a bounty or other benefits from the state has been so conditioned in the case of applicants for state unemployment benefits. (*State v. Hamilton*, 92 Ohio App. 285 [110 N.E.2d 37]; *Dworken v. Collopy*, 91 N.E. 2d 564.) Even the right to vote (*Opinion of the Justices*, 252 Ala. 351 [40 So. 2d 849]), and to citizenship (*United States v. Schwimmer*, 279 U.S. 644 [49 S.Ct. 448, 73 L.Ed. 889]) has been so conditioned.

The plaintiff contends that the constitutional amendment and implementing legislation are invalid for other reasons based on constitutional guarantees. Such contentions are without merit in view of what has been said in disposing of the basic contentions presented.

Attention has been directed to the recent decision in *Pennsylvania v. Nelson*, 350 U.S. 497 [76 S.Ct. 477, 100 L.Ed. 640] (April 2, 1956), wherein the Supreme Court declared

invalid a Pennsylvania penal provision (Pa. Penal Code, § 207, 18 Purdon's Pa. Stat. Ann., § 4207) which made it a crime to advocate the violent overthrow of the federal or state government. Reasons for the decision in that case were that Congress had occupied the field to the exclusion of "parallel" state legislation; that the dominant interest of the federal government required that such "prosecutions" should be exclusively within the control of the federal government, and that the "Pennsylvania Statute presents a peculiar danger of interference with the federal program." It is clear from the opinion of the court in that case that the exclusion of state sedition legislation was limited to the imposition of criminal penalties. The court directed its attention to "antisedition statutes, criminal anarchy laws, criminal syndicalist laws, etc." No reference is made to the many so-called loyalty oath cases considered by the court in recent years. The court's intention not to change or modify the established law in those cases by what it said in the Nelson case appears from its later opinion in *Slochower v. Board of Education*, 350 U.S. 551 [76 S.Ct. 637, 100 L.Ed. 692], decided on April 9, 1956, one week after the court's decision in the Nelson case. In speaking of balancing the state's interest in the loyalty of certain persons against the interests of those persons in their individual rights, the court referred by way of illustration to its earlier decisions in *Adler v. Board of Education*, *supra*, 342 U.S. 485, and *Garner v. Board of Public Works of Los Angeles*, *supra*, 341 U.S. 716, 720. In both of those cases the court upheld the validity of state legislation which required, as a condition to acquiring or maintaining particular privileges or rights by certain persons, that such persons refrain from advocating the violent overthrow of our form of government. If in the present case the constitutional amendment and implement-

ing legislation infringe upon an area occupied exclusively by Congress within the scope of the decision in the Nelson case, certainly the same conclusion would be true of the enactments involved in the Garner and Adler cases and the court would not have approved those decisions in the Slochower case. Furthermore, in any consideration of the possible application of the Nelson case to the case at bar, it would be unreasonable to conclude that the federal government intends to or has occupied the field of state taxation.

Finally, it should be observed that we are here dealing with questions of law and not with any questions of fact with reference to the activities of the plaintiff organization. As hereinbefore noted, there is attached to the protest filed with the payment of the tax sought to be recovered a statement of the principles and objectives of the plaintiff in furtherance of its religious activities. Those principles and doctrines reflect the high ideals of morality and personal conduct which are basic in the foundation of our system of government, both state and national. They are noble in purpose and inspirational in tone. It is inconceivable that an organization actuated by the doctrinal pronouncements there declared would knowingly harbor within itself any person or group of persons who would engage in the subversive activities referred to in section 19 of article XX. It is taken for granted that an organization actuated by those high purposes and ideals would be the first to champion the efforts of the state to protect itself against the destruction of those guarantees which are necessary to the existence of the plaintiff and to the preservation of the fundamental rights which it otherwise enjoys. But an assumed fact of the nonexistence of subversion in an organization is not enough. The law demands the ascertainment of that fact for purposes of taxation and section 32 requires the cooperation of the plaintiff in establishing it.

No good reason has been advanced why churches as well as all of the many other organizations seeking exemption from taxation should not be required to comply with the law of the state providing for assistance to the county assessors in the discharge of their duties to ascertain the facts which would justify the exemption. By the plaintiff's failure and refusal to allege that it has complied with the law which would enable it to qualify for the exemption the complaint fails to state a cause of action. The demurrer was therefore properly sustained without leave to amend.

The judgment is affirmed.

SCHAUER, J., SPENCE, J., and McCOMB, J., concurred.

TRAYNOR, J.—I dissent.

Section 19 of article XX of the California Constitution and section 32 of the Revenue and Taxation Code unjustifiably restrict free speech. Section 19 in effect imposes a penalty in the form of withholding a tax exemption upon any person or organization that chooses to speak in a certain manner, namely, by advocating overthrow of the federal or state governments by force or support of a foreign government against the United States in event of hostilities. Section 32 provides a special method of enforcing these restrictions as to certain tax exemptions. A person claiming one of these exemptions must make a declaration that he does not advocate the conduct specified in section 19. In effect the provisions impose a tax measured by the exemptions allowed to others not only upon those who advocate overthrow of the government by force or support of a foreign government in event of hostilities, but also upon those who do not advocate such conduct but refuse to declare that they do not.

A restraint on free speech is not less a restraint when it is imposed indirectly through withholding a privilege rather than directly through taxation, fine, or imprisonment. This court so held in *Danskin v. San Diego Unified Sch. Dist.*, 28 Cal. 2d 536, 547-548 [171 P.2d 885], involving a comparable privilege, the use of school buildings for public meetings. "It is true that the state need not open the doors of a school building as a forum and may at any time choose to close them. Once it opens the doors, however, it cannot demand tickets of admission in the form of convictions and affiliations that it deems acceptable. . . . The very purpose of a forum is the interchange of ideas, and that purpose cannot be frustrated by a censorship that would label certain convictions and affiliations suspect, denying the privilege of assembly to those who hold them, but granting it to those whose convictions and affiliations happen to be acceptable and in effect amplifying their privilege by making it a special one. In the competitive struggle of ideas for acceptance they would have a great strategic advantage in making themselves known and heard in a forum where the competition had been diminished by censorship, and their very freedom would intensify the suppression of those condemned to silence. It is not for the state to control the influence of a public forum by censoring the ideas, the proponents, or the audience; if it could, that freedom which is the life of a democratic assembly would be stilled. And the dulling effects of censorship on a community are more to be feared than the quickening influence of a live interchange of ideas."

The tax exemptions in question are likewise comparable to the privilege of using the mails at less than cost. In *Hanegan v. Esquire, Inc.*, 327 U.S. 146, 156 [66 S. Ct. 456, 90 L. Ed. 586], the court declared that, "grave constitutional questions are immediately raised once it is said that the use



of the mails is a privilege which may be extended or withheld on any grounds whatsoever. . . . Under that view the second-class rate could be granted on condition that certain economic or political ideas not be disseminated. The provisions of the [statute] . . . would have to be far more explicit for us to assume that Congress made such a radical departure from our traditions and undertook to clothe the Postmaster General with the power to supervise the tastes of the reading public of the country." The dissent of Mr. Justice Brandeis in *United States ex rel. Milwaukee Social Democratic Publishing Co. v. Burleson*, 255 U.S. 407, 430-431 [41 S.Ct. 352, 65 L.Ed. 704], invoked in the Esquire case, reasoned that, "Congress may not through its postal police power put limitations upon the freedom of the press which if directly attempted would be unconstitutional. This court also stated in *Ex parte Jackson* that 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.' It is argued that although a newspaper is barred from the second-class mail, liberty of circulation is not denied, because the first and third-class mail and also other means of transportation are left open to a publisher. Constitutional rights should not be frittered away by arguments so technical and unsubstantial. 'The Constitution deals with substance, not shadows. Its inhibition was leveled at the thing, not the name.' (*Cummings v. Missouri*, 4 Wall. (U.S.) 277, 825 [18 L. Ed. 356].) The Government, might, of course, decline altogether to distribute newspapers; or it might decline to carry any at less than the cost of the service; and it would not thereby abridge the freedom of the press, since to all papers other means of transportation would be left open. But to carry newspapers generally at a sixth of the cost of the service and to deny that service to

one paper of the same general character, because to the Postmaster General views therein expressed in the past seem illegal, would prove an effective censorship and abridge seriously freedom of expression."

Although free speech may not be an absolute right, it must be jealously guarded. As the court stated in *American Communications Assn. v. Douds*, 339 U.S. 382, 412 [70 S.Ct. 674, 94 L.Ed. 925], the first amendment "requires that one be permitted to advocate what he will unless there is a clear and present danger that a substantial public evil will result therefrom." That test is still a valid one. It was not repudiated in *Dennis v. United States*, 341 U.S. 494 [71 S.Ct. 857, 95 L.Ed. 1137]. The court was there concerned not to abolish the clear and present danger test but to bend it to the special situation of a critical time and the diabolic strategy of the Communist Party. As before, the key word in its solution was danger: "'In each case [courts] must ask whether the gravity of the 'evil,' discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger.'" (341 U.S. at 510.) There was evidence that the defendants, members of the Communist Party, advocated overthrow of the government by force and violence. The jury was instructed that it could not find them guilty under the statute unless it found that they had conspired with the intent that their advocacy "be of a rule or principle of action and by language reasonably and ordinarily calculated to incite persons to such action, all with the intent to cause the overthrow or destruction" of the government by force. The jury had also to determine whether the defendants intended to overthrow the government "as speedily as the circumstances would permit." Moreover, the court of appeals held that the record supported the conclusion that "the Communist Party is a highly disciplined organization, adept at

infiltration into strategic positions, use of aliases, and double-meaning language; that the Party is rigidly controlled; that Communists, unlike other political parties, tolerate no dissension from the policy laid down by the guiding forces, but that the approved program is slavishly followed by the members of the Party. . . ." (341 U.S. at 498, 511-512.)

It is essential in each case to inquire into the character of the speech to be restrained and the surrounding circumstances. The probability that advocacy will break out in action depends on the numbers, methods, and organization of the advocates.

The state provisions in question penalize advocacy in a totally different context from that in the Dennis case. The penalty falls indiscriminately on all manner of advocacy, whether it be a call to action or mere theoretical prophecy that leaves the way open for counteradvocacy by others. Moreover, with regard to advocacy of support of a foreign government, the state provisions penalize not only advocacy during actual hostilities but also advocacy during peacetime of action during hostilities that may occur, if at all, in the remote future.

There is no evidence in the present case that plaintiff church or its members advocate the overthrow of the government by force or otherwise. There is no evidence that plaintiff church or any of the organizations seeking tax exemptions are infiltrated by Communists or other disloyal persons, or that they are in any danger of such infiltration. The evidence is all to the contrary. It is baldly assumed that plaintiff church advocates the overthrow of the government by force because it refuses to declare that it does not. It is one thing for a court to sustain convictions after it has concluded following a full trial that it is dealing with an

organization wielding the power of a centrally controlled international Communist movement; it is quite another to deprive a church of a tax exemption on the ground that it will not declare that it does not advocate overthrow of the government.

If it is unconstitutional to restrain plaintiff from advocating overthrow of the government, it is *a fortiori* unconstitutional to require it to prove or declare that it does not advocate overthrow of the government. (See *Danskin v. San Diego Unified Sch. Dist.*, 28 Cal.2d 536, 548 [171 P.2d 885].) Such a restraint is the more vicious because it penalizes not only those who advocate overthrow of the government but also those who do not but will not declare that they do not. There are some who refuse to make the required declaration, not because they advocate overthrow of the government, but because they conscientiously believe that the state has no right to inquire into matters so intimately touching political belief. Rightly or wrongly they fear that such an inquiry is the first step in censorship of unpopular ideas. Even in the face of a bona fide danger, the state has no power to embark on an unnecessary wholesale suppression of liberty. (See *Butler v. Michigan*, 25 U.S.L. Week 4165, 4166.)

The majority opinion, however, invokes the rule that the government may attain a legitimate objective through means reasonably related thereto even though there is an incidental restraint on speech. Thus, in securing qualified and trustworthy employees for government service a loyalty oath may be required, not for the purpose of restraining speech, but as a means of selection. (*Adler v. Board of Education*, 342 U.S. 485, 492 et seq. [72 S.Ct. 380, 96 L.Ed 517, 27 A.L.R. 2d 472]; *Garner v. Board of Public Works Los Angeles*, 341 U.S. 716, 720 et seq. [71 S.Ct. 909, 95 L.Ed. 1317]; *Gerende v. Baltimore etc. Board of Elections*, 341

F.S. 56; *Steinmetz v. California State Bd. of Education*, 44 Cal. 2d 816; *Pockman v. Leonard*, 39 Cal. 2d 676 [249 P.2d 267].) Similarly, *American Communications Assn. v. Douds*, 339 U.S. 382 [70 S.Ct. 674, 94 L.Ed. 925] held that in seeking to keep interstate commerce free of political strikes, Congress may require labor officials to file non-Communist affidavits as a condition to their unions' invoking the jurisdiction of the National Labor Relations Board.

In such cases it is necessary to determine whether the provisions that incidentally restrain speech are in fact reasonably related to the attainment of the governmental objective. In *Lawson v. Housing Authority*, 270 Wis. 269 [70 N.W. 2d 605], cert. denied, 350 U.S. 882 [76 S.Ct. 135, 100 L.Ed. 778], the Supreme Court of Wisconsin considered a federal statute that provided in effect that no housing unit constructed under the statute could be occupied by a member of an organization designated as subversive by the attorney general. Pursuant to this statute, the Milwaukee Housing Authority adopted a resolution that required its tenants to execute a certificate of non-membership in the listed organizations. The court held the resolution unconstitutional, and after discussing the *Douds* case stated: "It is beyond our power to comprehend how the evil which might result from leasing units in a federally aided housing project to tenants who are members of organizations designated subversive by the Attorney General is in any way comparable in substantiality to that which would result to the general welfare through communists in control of labor organizations disrupting commerce by calling strikes to carry out Communist Party policy. This court deems the possible harm which might result in suppressing the freedoms of the First Amendment outweigh any threatened evil posed by the occupation by members of subversive organizations of units



in federally aided housing projects." (270 Wis. at 287-288.) In considering the same problem, the Supreme Court of Illinois pointed out that, "The purpose of the Illinois Housing Authority Act is to eradicate slums and provide housing for persons of low-income class. [Citation.] It is evident that the exclusion of otherwise qualified persons solely because of membership in organizations designated as subversive by the Attorney General has no tendency whatever to further such purpose." (*Chicago Housing Authority v. Blackman*, 4 Ill. 2d 319 [122 N.E. 2d 522, 526].)

In the present case the majority opinion thus states the governmental objective: "Encouragement to loyalty to our institutions and an incentive to defend one's country in the event of hostilities . . . doctrines which the state has plainly promulgated and intends to foster. It is the high purpose residing in its people that the state is attempting to encourage in its endeavor to protect itself against subversive infiltration. . . . Obviously a program of tax exemption designated to promote adherence to the principles of our government but constrained to include within its bounty persons or organizations actively advocating subversion and the support of enemies in time of hostilities, would be wholly without reason and result in its own defeat."

The issue thus narrows to whether a state can properly restrain free speech in the interest of promoting what appears to be eminently right thinking. A state with such power becomes a monitor of thought to determine what is and what is not right thinking. Great as a state's police power is, however, the United States Supreme Court has yet to sanction its breaking into people's minds to make them orderly. In holding that school children may not be compelled to salute the flag as a condition to attending public schools, the Supreme Court through Mr. Justice Jackson

stated that, "To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds. We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order. If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us." (*West Virginia Board of Education v. Barnette*, 319 U.S. 624, 641-642 [63 S. Ct. 1178, 87 L.Ed. 1628, 147 A.L.R. 674].)

Advocacy does not occur in an intellectual vacuum. Usually it answers or challenges other advocacy. As Mr. Justice Frankfurter aptly stated in *Dennis v. United States*, 341 U.S. 494, 549-550 [71 S. Ct. 857, 95 L. Ed. 1137]: "Of course no government can recognize a 'right' of revolution, or a 'right' to incite revolution if the incitement has no other purpose or effect. But speech is seldom restricted to a single purpose, and its effects may be manifold. A public interest is not wanting in granting freedom to speak their minds even to those who advocate the overthrow of the Government by force. For, as the evidence in this case abundantly illustrates, coupled with such advocacy is criti-

cism of defects in our society. Criticism is the spur to reform; and Burke's admonition that a healthy society must reform in order to conserve has not lost its force. Astute observers have remarked that one of the characteristics of the American Republic is indifference to fundamental criticism. Bryce, *The American Commonwealth*, c. 84. It is a commonplace that there may be a grain of truth in the most uncouth doctrine, however false and repellant the balance may be. Suppressing advocates of overthrow inevitably will also silence critics who do not advocate overthrow but fear that their criticism may be so construed. No matter how clear we may be that the defendants now before us are preparing to overthrow our Government at the propitious moment, it is self-delusion to think that we can punish them for their advocacy without adding to the risks run by loyal citizens who honestly believe in some of the reforms these defendants advance. It is a sobering fact that in sustaining the convictions before us we can hardly escape restriction on the interchange of ideas."

Section 32 impedes not only advocacy itself but discussion short of advocacy that may be of the utmost value. As Mr. Justice Jackson pointed out in the Dennis case, "Of course, it is not always easy to distinguish teaching or advocacy in the sense of incitement from teaching or advocacy in the sense of exposition or explanation," and Mr. Justice Frankfurter recognized that, "there is no divining rod by which we may locate 'advocacy.' Exposition of ideas readily merges into advocacy." (341 U.S. at 545, 572.) Yet section 32 compels the cautious to forego discussion for fear they will overstep the line that no divining rod can locate.

Errors in thought or expression are best counteracted by deeper thought and more cogent expression. Only through free discussion can subversive doctrines be understood and

effectively combatted. "The interest, which [the First Amendment] guards, and which gives it its importance, presupposes that there are no orthodoxies—religious, political, economic, or scientific—which are immune from debate and dispute. Back of that is the assumption—itself an orthodoxy, and the one permissible exception—that truth will be most likely to emerge, if no limitations are imposed upon utterances that can with any plausibility be regarded as efforts to present grounds for accepting or rejecting propositions whose truth the utterer asserts, or denies.' . . . In the last analysis it is on the validity of this faith that our national security is staked." (Mr. Justice Frankfurter concurring in *Dennis v. United States*, 341 U.S. 494, 550 [71 S.Ct. 857, 95 L.Ed. 1137].)

The majority opinion in the present case goes far beyond any United States Supreme Court decision in upholding legislation that restricts the citizen's right to speak freely. Section 19 of article XX, implemented by section 32 of the Revenue and Taxation Code, arbitrarily assumes that those who seek tax exemptions advocate overthrow of the government unless they declare otherwise. The provisions infringe the right to engage in such advocacy without reference to its seriousness, inhibit free discussion short of advocacy, and penalize the belief that the government has no right to require professions of innocence in the absence of proof of guilt. A law with such consequences cannot stand in the face of the constitutional guarantees.

I would reverse the judgment.

GIBSON, C. J., concurred.

CARTER, J.—I dissent.

I approach the consideration of this case with a profound consciousness that the problems involved may have a direct

impact upon the stability of our state and federal governments. Evidently those who enacted the legislation here involved felt that it was necessary to preserve the status quo of those governments. On the other hand the plaintiff challenges the enactments as an invasion of fundamental constitutional guarantees to it and other religious institutions. We are, therefore, at the outset, faced with the problem as to what sanctions, in the way of pledges of fealty and loyalty, our government may exact from a taxpayer in order to qualify the latter for a tax exemption granted to all in the same class. The solution of this problem depends upon our interpretation and application of the constitutional guarantees relied upon by plaintiff as barriers against such sanctions.

It must be remembered that while our government was "conceived in liberty," it was born in revolution. The Declaration of Independence was the antithesis of a pledge of allegiance or loyalty to the British government of which the then American colonists were a part. This memorable document epitomized the concept of its framers of the objects and purposes of government and the right of the people to change it by force if necessary. It declared: "We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it and to institute new government, laying its foundation on such principles; and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Pru-



dence, indeed, will dictate that governments long established should not be changed for light and transient causes; and, accordingly, all experience hath shown that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government."

The events which followed the adoption of the Declaration of Independence by the Continental Congress on July 4, 1776, are well known to every student of American history. These events culminated in the Constitutional Convention at Philadelphia during the summer of 1787 where the Constitution of the United States was drafted. Many of the delegates at the Constitutional Convention had been members of the Continental Congress which had adopted the Declaration of Independence. They were revolutionists in the truest and most dignified sense. It should be remembered that the Declaration of Independence and the Constitution of the United States were prepared by a group of men who had endured tyranny under a monarchical form of government for over three generations. They were the leaders in the struggle which overthrew that government and they sought to establish a government of the people, by the people, and for the people, which would derive its just powers from the consent of the governed. They sought to establish justice, ensure domestic tranquility, promote the general welfare, provide for the common defense and secure the blessings

of liberty to themselves and their posterity—a government which would govern without tyranny and without oppression and which would guarantee to the governed all of the liberty that a free people in a homogenous society could enjoy.

The great liberality accorded to the guarantees of freedom of speech and press by those at the head of our government during its formative period is exemplified by the following statement in the First Inaugural Address of President Thomas Jefferson. He there declared: "If there be any among us who would wish to dissolve this union or change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it." This same concept was again expressed by Mr. Jefferson in his letter to Benjamin Rush in these words: "I have sworn upon the altar of God eternal hostility against every form of tyranny over the mind of man." This concept was more recently depicted by Mr. Justice Brandeis in *Whitney v. California*, 274 U.S. 357 [47 S.Ct. 641, 71 L.Ed. 1095], in words that will forever be a part of our American heritage, "Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the process of popular government, no danger flowing from free speech can be deemed clear and present unless the incidence of the evil apprehended is so imminent that it may be fatal before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."

Over a century and a half has elapsed since the above quoted utterances of Thomas Jefferson. Our government has withstood one major revolution and several minor armed rebellions but the fundamental basic concept of civil liberties embraced within the Bill of Rights has remained unimpaired.

It is worthy of note that the framers of the Constitution of the United States saw fit to exact of the person who assumed the office of President a very simple oath which reads as follows: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States." (U.S. Const., art. II, § 1.) This is the only oath mentioned in the Constitution. Notwithstanding the great trust reposed in and power conferred upon the President of the United States by the Constitution and laws enacted by Congress, no other oath or pledge of loyalty may be exacted of him. Nevertheless no president has ever been suspected of disloyalty. It may be said with confidence that history has demonstrated the wisdom of the framers of the Constitution in drafting an oath so simple and yet so effective that it has endured the tests of time and trial. The past at least is secure. But such an oath was not deemed sufficient to insure the loyalty and fealty of the Vice President, members of Congress and other officials of our national government. Although no other official of our government possesses the power or authority of the President, they are required to take an oath much more exacting as it amounts to a pledge of allegiance. This oath is contained in an act of Congress and is as follows: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and alle-

giance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God." (U.S. Code, title V, § 16, pp. 10-11, U.S.C. 1952 ed., titles 1-14.) I find no fault with this oath and recognize the propriety of exacting such an oath from one who assumes an official position with our government. It will be observed, however, that neither of the above quoted oaths has the slightest resemblance to the test oath here involved. In commenting on such an oath Dr. Carl Joachim Friedrich, Professor of Government, of Harvard University had the following to say: "It is depressing to realize that the oath has always cropped up as a political device when the political order was crumbling. In the period of religious dissensions the oath of allegiance made its appearance in England as an instrument of intolerance and, a little later, of royal oppression. James Stuart, the tiresome pedant on the throne, sought refuge in an oath required of all ministers and the like (most teaching then being religious). At that time the imperial pretensions of the 'reformed' papacy, the right of the Pope claimed by the Jesuits to absolve the subjects of an heretical king from their allegiance, made the king desirous of testing the loyalty of his more influential subjects. Yet not many years later his son's head rolled into the sand.

"Following that, Oliver Cromwell in his desperate efforts to find a legitimate basis for his dictatorial regime, demanded an oath preceding the election of parliament in 1653 that no one participating in the election would allow the constitution 'as settled in one person and parliament' to be disturbed. But Cromwell died and the oath was forgotten. The rupture which the oath was supposed to heal did not disappear until toleration and a liberal, truly constitutional

government had taught people how Catholic and Protestant, how parliamentary and authoritarian, how Whig and Tory could live peaceably together, with no one requiring the other to swear oaths which were either unnecessary or ineffectual.

"And where have oaths appeared in our own day? In Fascist Italy and in Nazi Germany. In both of these countries the dictators have promulgated requirements according to which the teachers and professors have to swear an oath of allegiance to the Duce, the Leader. But what, one may ask, was the object of demanding such a declaration from men who every day were obliged to mold their words and their teachings to the Fascist creed? The purpose was to humiliate or to destroy them. There were plenty of men who were known to the students as non-Fascists, non-Nazis. If they could be forced into swearing their allegiance to the official creed, they were morally discredited, they were shown to be trimmers. What is more, the man of integrity and of faith is the really dangerous enemy. He would not consent. He would protest. Gaetano Salvemini, now teaching at Harvard, is such a man. He knew the game of Mussolini and he left." (Article entitled "Teacher's Oaths," published in the January, 1936 issue of Harper's, vol. 172 at p. 171.)

At this point, I cannot refrain from quoting the words of warning contained in the powerful concurring opinion of Mr. Justice Black in *Wieman v. Updegraff*, 344 U.S. 183, 192 [73 S.Ct. 215, 97 L.Ed. 216]: "History indicates that individual liberty is intermittently subjected to extraordinary perils. . . . The first years of our Republic marked such a period. Enforcement of the Alien and Sedition Laws by zealous patriots who feared ideas made it highly dangerous for people to think, speak, or write critically about



government, its agents, or its policies, either foreign or domestic. Our constitutional liberties survived the ordeal of this regrettable period because there were influential men and powerful organized groups bold enough to champion the undiluted right of individuals to publish and argue for their beliefs however unorthodox or loathsome. Today, however, few people and organizations of power and influence argue that unpopular advocacy has this same wholly unqualified immunity from governmental interference. For this and other reasons the present period of fear seems more ominously dangerous to speech and press than was that of the Alien and Sedition Laws. Suppressive laws and practices are the fashion. The Oklahoma oath statute is but one manifestation of a national network of laws aimed at coercing and controlling the minds of men. Test oaths are notorious tools of tyranny. *When used to shackle the mind they are, or at least they should be, unspeakably odious to a free people.* Test oaths are made still more dangerous when combined with bills of attainder which like this Oklahoma statute impose pains and penalties for past lawful associations and utterances.

"... Our own free society should never forget that laws which stigmatize and penalize thought and speech of the unorthodox have a way of reaching, ensnaring and silencing many more people than at first intended. *We must have freedom of speech for all or we will in the long run have it for none but the cringing and the craven.* And I cannot too often repeat my belief that the right to speak on matters of public concern must be wholly free or eventually be wholly lost." (Emphasis added.)

History is replete with accounts of the many stratagems created by tyrants to violate the individual's liberty. But it is also replete with accounts of man's constant warfare

against these devices and victories won by courageous judges, legislators, administrators, lawyers, and citizens.

In 1787, the founders of this nation assumed that they had settled these matters for all time when they drew upon the lessons of history and wrote a Bill of Rights to assure the individual permanent freedom from official tyranny, and the right freely to participate in the process of self-government.

"Such constitutional limitations arise from grievances, real or fancied, which their makers have suffered, and should go *pari passu* with the supposed evil. They withstand the winds of logic by the depth and toughness of their roots in the past. Nor should we forget that what seems fair enough against a squalid huckster of bad liquor may take on a very different face, if used by a government determined to suppress political opposition under the guise of sedition." (Learned Hand, J., in *United States v. Kirschblatt* (C.C.A.2d), 16 F.2d 202, 203, 51 A.L.R. 416.)

"These specific grievances and the safeguards against their recurrence were not defined by the Constitution. They were defined by history. Their meaning was so settled by history that definition was superfluous. . . . 'Upon this point a page of history is worth a volume of logic.' *New York Trust Co. v. Eisner*, 256 U.S. 345, 349 [41 S.Ct. 506, 65 L.Ed. 963, 16 A.L.R. 660]." (Frankfurter, J., *United States v. Lovett* (1945), 328 U.S. 303, 321, 323 [66 S.Ct. 1073, 90 L.Ed. 1252].)

"It would not be possible to add to the emphasis with which the framers of our Constitution and this court (in *Boyd v. United States*, 116 U.S. 616 [6 S.Ct. 524, 29 L.Ed. 746], in *Weeks v. United States*, 232 U.S. 383, [34 S.Ct. 341, 58 L.Ed. 652, L.R.A. 1915B 834], and in *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 [40 S.Ct. 182, 64 L.Ed. 319, 24 A.L.R. 1426]) have declared the importance to

*political liberty* and to the welfare of our country of the due observance of the rights guaranteed under the Constitution by these two amendments. The effect of the decisions cited is: That such rights are declared to be indispensable to the 'full enjoyment of personal security, personal liberty, and private property'; that they are to be regarded as of the very essence of constitutional liberty; and that the guaranty of them is as important and as imperative as are the guaranties to the other fundamental rights of the individual citizen—the right to trial by jury, to the writ of habeas corpus, and to due process of law. It has been repeatedly decided that these Amendments should receive a liberal construction, so as to prevent stealthy encroachment upon or 'gradual depreciation' of the rights secured by them, by imperceptible practice of courts, or by well-intentioned but mistakenly over-zealous executive officers." (*Gouled v. United States* (1920), 255 U.S. 298, 303 [41 S.Ct. 261, 65 L.Ed. 647], Clarke, J.) (Emphasis supplied.) See also: Brandeis, J. dissenting, *Olmstead v. United States* (1927), 277 U.S. 438, 476, 478 [48 S.Ct. 564, 72 L.Ed. 944, 66 A.L.R. 376], and *Jones v. Securities & Exch. Com.* (1935), 298 U.S. 1, 28 [56 S.Ct. 654, 80 L.Ed. 1015].

"If there is one fixed star in our Constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." (Jackson, J., in *West Virginia State Board of Education v. Barnette* (1943), 319 U.S. 624, 642 [63 S.Ct. 1178, 87 L.Ed. 1628, 147 A.L.R. 674].) (Emphasis supplied.)

The story of the rise and fall of the *oath ex-officio* needs to be retold. It will be recalled that the early 1200's were marked by the adoption of this procedural device in the

ecclesiastical courts. In this period the inquisitional oath began to take the place of the trial by compurgation oaths in the ecclesiastical courts. The compurgation trials conducted with the device of "oath helpers" had become little better than a farce. The new method of the *oath ex-officio* was one which pledged the accused to answer truly and was followed by a rational process of judicial probing by questions on the specific details of the affair. In a footnote by John H. Wigmore in 15 Harvard Law Review 615, it is stated that by the middle of the 13th century "the new oath became the customary instrument in the papal inquisition of heresy; which, indeed, owed its effectiveness largely to the new methods."

Liberals in the church courts insisted that the oath could only be imposed if the court had a rational hypothesis for proceeding against the suspect. Such rational hypothesis could either be *fama publica* or *clamosa insinatio*. However, this was too mild for those who wanted a more vigorous pursuit of heretics and schismatics, and they finally prevailed in establishing the doctrine that the oath could be imposed by the church official *ex-officio* without any antecedent foundation. This extreme position, however, directly resulted in the downfall of the power of the ecclesiastical courts because of the public indignation it aroused.

The ordinary course of trial by the Inquisition was this. A man would be reported to the inquisitor as of ill-repute for heresy, or his name would occur in the confessions of some other prisoners. A secret inquisition would be made and all accessible evidence against him would be collected. When the mass of surmises and gossip, exaggerated and distorted by the natural fear of the witnesses, eager to save themselves from the suspicion of favoring heretics, grew sufficient for action, the blow would fall. The accused was

then prejudged. He was assumed to be guilty, or he would not have been put on trial, and virtually his only mode of escape was by confessing the charges against him, abjuring heresy, and accepting whatever punishment 'might be imposed on him in the shape of penance. Persistent denial of guilt and assertion of orthodoxy, when there was evidence against him, rendered him an impenitent, obstinate heretic, to be abandoned to the secular arm and consigned to the state. (See Henry Charles Lea, *A History of the Inquisition of the Middle Ages*, I, p. 407.)

However, the English people early registered their resistance to general inquisitorial methods and their attendant abuses. A statute passed in 1360 in the reign of Edward III, provided, "that all general inquiries before this time granted within any seignories, for the mischiefs and oppression which have been done to the people by such inquiries, shall utterly cease and be repealed." (34 Edw. III, ch. 1.)

But in 1583 the Court of High Commission in Causes Ecclesiastical, under the leadership of Archbishop Whitgift, started a crusade against heresy wherever it could be found, examining suspected persons under oath in most extreme *ex-officio* style.

In 1609 Sir Edward Coke, as Chief Justice of Common Pleas, granted prohibition against the High Court of Ecclesiastical Causes in *Edward's* case. (13 Rep. 9.) Edward had been charged with libel and the church court put him under the *ex-officio* oath to compel him to state his meaning of the libelous words he was accused of uttering. The common law court took jurisdiction away from the church court upon the ground, among others, that "in cases where a man is to be examined upon his oath, he ought to be examined upon acts or words, and not of the intentions or thought of his heart: and if any man should be examined upon his oath of the



opinion he holdeth concerning any point of religion, he is not bound to answer the same."

But the oath *ex-officio* persisted and the Court of the Star Chamber began during James' reign to use the *ex-officio* oath in stamping out sedition. Here the common law courts were powerless to prevent employment of the oath procedure because they lacked jurisdiction over the Court of the Star Chamber.

In 1639 the Court of the Star Chamber examined John Lilburn, "Freeborn John," an opponent of the Stuarts, on a charge of printing or importing certain heretical and seditious books. Lilburn refused to answer questions "concerning other men, to insnare me, and to get further matter against me." The Council of the Star Chamber condemned him to be whipped and pilloried for his "boldness in refusing to take a legal oath," without which many offenses might go "undiscovered and unpunished." (See 3 How. State Trials 1315, et seq.)

The whip that lashed "Freeborn John" smashed the Court of the Star Chamber as well. In July, 1641, Parliament abolished the Court of the Star Chamber, the Court of High Commission for Ecclesiastical Causes, and provided by statute that no ecclesiastical court could thereafter administer an *ex-officio* oath on penal matters. In 1645 the House of Lords set aside Lilburn's sentence and in 1648 Lilburn was granted £3000 reparation for the whipping which he had received.

Meanwhile, the scene of struggle against oaths *ex-officio* was carried to colonial America. The story is well-told by R. Carter Pittman in 21 Virginia Law Rev. 763 from which the following quotations are taken:

"The settlement of the English colonials in the new world took place at a time in English History when opposition to

the *ex-officio* oath of the ecclesiastical courts was most pronounced, and at the period when the insistence upon the privilege against self-incrimination in the courts of common law had begun to have decided effect. . . . The *ex-officio* oath, as employed in the ecclesiastical courts, which regulated the most intimate details of men's daily life, and more particularly by the Court of High Commission, was possibly the most hated instrument employed to create the unhappy plight of these Puritans and Separatists. . . .

"About getting out of England there was much 'red tape' and it consisted in the most part of taking oaths—the oath of Supremacy and the oath of Allegiance, etc. For days and weeks thousands waited aboard ship in the river Thames until *this oath ordeal was over* and after that they were forced with a refined cruelty to say the prayers in the Anglican prayer books twice a day at sea. . . ."

The trial of Mrs. Ann Hutchinson before Governor Winthrop of Massachusetts in the year 1627 was recalled by Mr. Justice Black in *Adamson v. California*, 332 U.S. 46 [67 S.Ct. 1672, 91 L.Ed. 1903, 171 A.L.R. 1223], when he commented at page 88:

"Mrs. Hutchinson was tried, if trial it can be called, for holding unorthodox religious views. People with a consuming belief that their religious convictions must be forced on others rarely ever believe that the unorthodox have any rights which should or can be rightfully respected. As a result of her trial and *compelled admissions*, Mrs. Hutchinson was found guilty of *unorthodoxy* and banished from Massachusetts. The lamentable experience of Mrs. Hutchinson and others, contributed to the over-whelming sentiment that demanded adoption of the *Constitutional Bill of Rights*. The founders of this Government wanted no more such 'trials' and punishments as Mrs. Hutchinson had to undergo.

They wanted to erect barriers that would bar legislators from passing laws that encroached on the domain of belief, and that would, among other things, strip courts and *all public officers of a power to compel people to testify against themselves.*" (Emphasis supplied.)

But the ingenuity of those who would use the oath against the unorthodox was undaunted.

See *Harrison v. Evans*, 1 English Reports, 1437, decided by the House of Lords in 1767. Evans was a Protestant Dissenter and this fact was known to the Lord Mayor of London. Nevertheless, the Mayor appointed Evans to fill a vacancy as sheriff, despite the existence of an act providing that no person should be admitted to any office who had not, within the twelve preceding months, "received the sacrament of the Lord's Supper according to the rites of the Church of England." Because of this statute Evans could not take the oath of office or assume it, and he was assessed for a statutory penalty of £600 which was made applicable to any citizen who refused to assume an office after being appointed thereto.

The House of Lords, by a 6 to 1 vote, ruled with the dissenting Evans, overturned the judgments of the lower courts and returned to him his £600.

*"Test oaths, designed to impose civil disabilities upon men for their beliefs rather than for unlawful conduct were an abomination to the founders of this nation. This feeling was made manifest in Article VI of the Constitution which provides that no religious test shall ever be required as a qualification to any office or public trust under the United States."*

(Black J., dissenting *In re Summers* (1945), 325 U.S. 561, 576 [65 S.Ct. 1307, 89 L.Ed. 1795].) (Emphasis supplied.)

"No purpose in ratifying the Bill of Rights was clearer than that of securing for the people of the United States much greater freedom of religion, expression, assembly, and

petition than the people of Great Britain had ever enjoyed. It cannot be denied, for example, *that the religious test oath or the restrictions upon assembly then prevalent in England would have been regarded as measures which the Constitution prohibited the American Congress from passing.*" (Emphasis supplied.) (*Bridges v. California* (1941), 314 U.S. 252 at 265 [62 S.Ct. 190, 86 L.Ed. 192, 159 A.L.R. 1346].)

It is revealing to note that test oaths and the struggle against them arose at a time when the division between church and state was in its early stages, when the separation was far from complete. The immunity from compulsory disclosure which ultimately developed affected not only the right of the individual to worship as he pleased but also his right, notwithstanding his place or mode of worship, to hold political office. The protection accorded religious belief developed hand in hand with nonsectarianism in government.

This policy has been recognized in the United States. While the original purpose behind the abolition of the test oath may have been to further religious liberty, the effect has been to extend political liberty. The following statement is illustrative: "This conjunction of liberties is not peculiar to religious activity and institutions alone. The First Amendment gives freedom of mind the same security as freedom of conscience. *Cf. Pierce v. Society of Sisters*, 268 U.S. 510 [45 S.Ct. 571, 69 L.Ed. 1070]. Great secular causes, with small ones, are guarded. The grievances for redress of which the right of petition was insured, and with it the right of assembly, are not solely religious or political ones. And the rights of free speech and a free press are not confined to any field of human interest." (*Thomas v. Collins*, 323 U.S. 516, 531 [65 S.Ct. 315, 89 L.Ed. 430].)

The California 1897 Direct Primary Act permitted political parties to require persons, as a condition of voting at the primary, to give an oath that they would thereafter support the nominees of that party. That statute was declared unconstitutional and the Supreme Court, in *Spier v. Baker* (1898), 120 Cal. 370, said at page 379 [52 P. 659, 41 L.R.A. 196]: "... And the moment you recognize the existence of power in the legislature to create tests in these primary elections, you recognize the right of the legislature to create any test which to that body may seem proper. While the test prescribed in this act may be said to be a most reasonable one, yet the right to make it carries with it the right to make tests most unreasonable. If the power rests in the legislature to create a test, then the power is found in a Democratic legislature to make the test at a primary election a belief in the free coinage of silver at the ratio of sixteen to one, and the same power is found in a Republican legislature to make the test a belief in the protective tariff. If such a power may be sustained under the constitution, then the life and death of political parties are held in the hollow of the hand by a state legislature."

In *Thomas v. Collins*, 323 U.S. 516 [65 S.Ct. 315, 89 L.Ed. 430], the same thought is expressed: "But it cannot be the duty, because it is not the right of the state to protect the public against false doctrine. The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech, and religion. *In this field every person must be his own watchman for truth, because the forefathers did not trust any government to separate the true from the false for us.*" (Emphasis supplied.)

In the light of the foregoing discussion, let us consider the attacks made by plaintiff upon the oath here required. It



is contended, with merit, that the oath here is unconstitutional in that it violates the equal protection clauses of both the federal and state Constitutions and that it also violates the First Amendment to the Constitution of the United States. Section 32 makes an exception insofar as the householder's \$100 exemption on personal property is concerned. While it cannot be denied that the Legislature in its wisdom may classify in order that certain evils may be avoided in the future, such classification must bear a reasonable relation to the evil to be avoided. There is here no reasonable classification when the evil to be avoided is considered. There is no evidence that any of the churches or veterans here involved advocated, or intended to advocate, the forbidden political philosophy. The constitutional amendment and section 32 appear to be a sort of shotgun attempt on the part of the Legislature to hit an undefined object. In other words, there is no relation between the object to be achieved and the tactics taken to achieve it. A statement made in the majority opinion clearly shows the fallacy in the entire affair. That statement reads as follows: "By its enactment [section 19 of article XX] the people of this state declared the public policy of withholding from the owners of property in this state *who engage in the prohibited activities* the benefits of tax exemption. The denounced activities are criminal offenses under federal and state laws. They are prohibited by the act of Congress known as the Smith Act (54 Stat. 670) and by our state law (Stats. 1919, p. 281)." It should be emphatically stated and understood that not one of the churches or veterans here involved has been so much as accused of subversive activities. But through their refusal to take the unconstitutional (as I believe) oath, they are penalized in advance for something they have not done and will, in all probability, never

do. By the majority opinion we are informed that the reason for the oath is to protect state revenues from impairment by those who would seek to destroy it by unlawful means. An entirely different situation would be presented had any of those involved sought to destroy the state, but here only future *highly problematical* activity is forsworn although the tax is levied for past ownership of property to which the exemption was applicable. Just why charitable institutions are singled out as presenting the greatest danger to this country in time of peace or war is not made clear in the majority opinion. It is Hornbook law that legislation classifying certain groups for corrective purposes must bear a reasonable relationship to the object to be achieved. Churches would, indeed, seem to me to be the least likely subjects of classification for legislative measures to correct the evil thought to exist. Veterans, also, are those who have risked their lives or have been willing to risk them to uphold the ideals for which this country stands. The exemptions were granted, in the first instance, so that religious work might be carried on with the least amount of tax burden possible to the end that the money saved thereby might be used to promote the general welfare; in the second instance, to veterans because they gave up homes, families and positions to promote the general welfare insofar as protecting this country from an enemy was concerned. It hardly seems logical to assume that laws removing the tax exemptions from those dedicated to the promotion of the general welfare because they *might*, in the future, decide to do a turn-about-face and *destroy* the general welfare can be said to be a reasonable classification. If there is one principle that has always theretofore been clearly understood in this country it is that every person is presumed innocent until proven guilty beyond a reasonable doubt. The legisla-

tion involved here presumes that one refusing to sign the oath has been, or will soon be, guilty of treasonable conduct. From what is said in the majority opinion it appears that this thought did occur to the members of the court signing it. We are informed that there is a presumption of innocence *but* that the assessor, because of it, is not relieved from making the investigation enjoined on him by law; that his administrative determination is not binding on the tax exemption claimant "but it is sufficient to authorize him to tax the property as non-exempt and to place the burden on the claimant to test the validity of his administrative determination in a court of law." What is this but forcing the supposedly subversive organization or person to prove *itself* or *himself* innocent beyond a reasonable doubt?

In testing the reasonableness of the laws under attack here, the next question which presents itself is why are householders excepted from those who must take the oath before any tax exemption is allowed them? We are told that the "segment of householders in this state is so overwhelmingly large as compared with others chosen for exemption that the cost of processing them would justify their separate classification." If this class is so "overwhelmingly large" it would appear that if the old adage "in numbers lie strength" is true, that this class should also be required to take the oath prior to claiming the exemption. It would also appear that mere difficulty in "processing" would be of little moment in an undertaking thought to be so vitally necessary. Furthermore, if the principle behind the oath is, as we are told, to prevent those dangerous persons from depleting the state's revenues, it would appear that this "overwhelmingly large" class might, even though the exemption is a relatively small one, deplete it even more than the revenues from those which fall within the legislation. The Supreme Court of the

United States said (*Louisville Gas & E. Co. v. Coleman*, 277 U.S. 32, 37 [48 S.Ct. 423, 72 L.Ed. 770]) that "The equal protection clause, like the due process of law clause, is not susceptible of exact delimitation. No definite rule in respect of either, which automatically will solve the question in specific instances, can be formulated. Certain general principles, however, have been established in the light of which the cases as they arise are to be considered. In the first place, it may be said generally that the equal protection clause means that the rights of all persons must rest upon the same rule under similar circumstances, *Kentucky Railroad Tax Cases*, 115 U.S. 321, 337 [6 S.Ct. 57, 29 L.Ed. 414]; *Magoun v. Illinois Trust & Savings Bank*, 170 U.S. 283, 293 [18 S.Ct. 594, 42 L.Ed. 1037], and that it applies to the exercise of all the powers of the state which can affect the individual or his property, including the power of taxation. *County of Santa Clara v. Southern Pac. R. Co.*, 18 F. 385, 388-399 [9 Sawy. 165]; *The Railroad Tax Cases*, 13 F. 722, 733 [8 Sawy. 238]. It does not, however, forbid classification; and the power of the state to classify for purposes of taxation is of wide range and flexibility, provided always, that the classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 [40 S.Ct. 560, 64 L.Ed. 989]; *Air-way etc. Corp. v. Day*, 266 U.S. 71, 85 [45 S. Ct. 12, 69 L.Ed. 169]; *Schlesinger v. Wisconsin*, 270 U.S. 230, 240 [46 S.Ct. 260, 70 L.Ed. 557, 43 A.L.R. 1224]. That is to say, mere difference is not enough; the attempted classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be

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made arbitrarily and without any such basis.' *Gulf, Colorado & Santa Fe Ry. Co. v. Ellis*, 165 U.S. 150, 155 [17 S.Ct. 255, 41 L.Ed. 666]."

There is in my mind no doubt whatsoever that the legislation with which we are here concerned bears no relation whatsoever to the objective to be achieved. Presumably that objective is to stamp out, by any means at hand, the promulgation of unpopular ideas. While the idea of the overthrow of the government of this country by force and violence in either peace or war is as abhorrent to me as it is to the majority of Americans, I am at a complete loss when it comes to imagining any reasonable theory on which the legislation in question can be considered an effective way of preventing such action. The tax itself is on property owned by churches and used for religious purposes and the exemption applies only when such property is used for such purposes. So far as the veteran's exemption is concerned, the tax to which it applies is also on property. Property taxes and unpopular beliefs or advocacy would appear to be as far apart as the poles and to bear no reasonable relationship one to the other. The classification here involved falls directly within the rule of the *Louisville Gas* case: it is arbitrary, it does not rest upon a difference bearing a reasonable and just relation to the act in respect to which the classification is proposed: it is a *mere* difference which "is not enough."

#### THE OATH IS A VIOLATION OF THE CONSTITUTIONAL GUARANTEE OF FREEDOM OF SPEECH:

In *Danskin v. San Diego Unified Sch. Dist.*, 28 Cal.2d 536, 542 [171 P.2d 885], we held that "Freedom of speech and of peaceable assembly are protected by the First Amendment of the Constitution of the United States against infringement by Congress. They are likewise protected by the Four-



teenth Amendment against infringement by state Legislatures. (*Thomas v. Collins*, 323 U.S. 516, 530 [65 S.Ct. 315, 89 L.Ed. 430]; *De Jonge v. Oregon*, 299 U.S. 353, 364 [57 S.Ct. 255, 81 L.Ed. 278].) *However reprehensible a Legislature may regard certain convictions or affiliations, it cannot forbid them if they present 'no clear and present danger that they will bring about the substantive evils' that the Legislature has a right to prevent. 'It is a question of proximity and degree.'* (*Schenck v. United States*, 249 U.S. 47, 52 [39 S.Ct. 247, 63 L.Ed. 470].) The United States Supreme Court has been alive to the difference between remote dangers and substantial ones, between remote dangers and immediate ones . . . ' . . . Moreover, the likelihood, however great, that a substantive evil will result cannot alone justify a restriction upon freedom of speech or the press. The evil itself must be "substantial," Brandeis, J., concurring in *Whitney v. California*, *supra*, 274 U.S. at page 374; it must be "serious," *id.* 274 U.S. at page 376. And even the expression of "legislative preferences or beliefs" cannot transform minor matters of public inconvenience or annoyance into substantive evils of sufficient weight to warrant the curtailment of liberty of expression. . . . ' " (*Bridges v. California*, 314 U.S. 252, 261, quoting from the concurring opinion of Mr. Justice Brandeis in *Whitney v. California*, 274 U.S. 357, 374 [47 S.Ct. 641, 71 L.Ed. 1095].)

A reading of the majority opinion leaves in the minds of the reader the implication that the "clear and present danger" rule was abrogated by the later case of *Dennis v. United States*, 341 U.S. 494 [71 S.Ct. 857, 95 L.Ed. 1137]. In the *Dennis* case it was specifically noted by the court that in the Smith Act "Congress did not intend to eradicate the free discussion of political theories, to destroy the traditional rights of Americans to discuss and evaluate ideas

without fear of governmental sanction. Rather Congress was concerned with the very kind of activity *in which the evidence showed these petitioners engaged.*" It will be recalled that we have here *no evidence* that the churches and veterans involved were even so much as accused of the forbidden activities. In the Dennis case the petitioners had been found guilty by a jury of organizing a Communist party in the United States; in knowingly and wilfully teaching and advocating the overthrow of our government by force and violence. The court also held that it had been determined that the evidence amply supported the necessary finding of the jury that the petitioners "were unwilling to work within our framework of democracy, but intended to initiate a violent revolution whenever the propitious occasion appeared." In the majority opinion in the Dennis case it was said that "Overthrow of the Government by force and violence is certainly a substantial enough interest for the Government to limit speech" and speaking of the "clear and present danger" rule it was said "Obviously, the words cannot mean that before the Government may act, it must wait until the *putsch* is about to be executed, the plans have been laid and the signal is awaited. *If Government is aware that a group aiming at its overthrow is attempting to indoctrinate its members and to commit them to a course whereby they will strike when the leaders feel the circumstances permit, action by the Government is required.*" (Emphasis added.) The court expressly rejected the contention that success or probability of success in overthrowing the government was the criterion. The court then, in speaking of prior cases, said that the court had not been "confronted with any situation comparable to the instant one—the development of an apparatus designed and dedicated to the overthrow of the Government, in the context of

world crisis after crisis." The Supreme Court then stated the rule, relied upon by the majority here, that "In each case [courts] must ask whether the gravity of the 'evil,' discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger." This rule, following the court's language concerning what constituted a "clear and present" danger and read in the light of the facts as they were stated in the Dennis case, shows the absurdity of this tempest-in-a-teapot with which we are here confronted: there is no showing that the churches and veterans were highly organized into a war-like machine dedicated to the overthrow of the government by force and violence with leaders highly trained and ready to give the "word" when the time was ripe for revolution! The objects of the legislation, the objective and the means used to achieve it are completely unrelated. Where is the "danger" so far as churches and veterans are concerned? And does the denial of a charitable exemption constitute a reasonable attempt to save this country from revolution? Or does the oath involved just constitute an unconstitutional invasion of freedom of speech? In my opinion it constitutes an unconstitutional invasion of freedom of speech with the absurdity of the entire situation, pinpointed by the thought that any embryo revolutionist would surely not hesitate to subscribe to such an oath.

As Mr. Justice Douglas said in his dissenting opinion in the Dennis case, "Full and free discussion keeps a society from becoming stagnant and unprepared for the stresses and strains that work to tear all civilization apart.

"Full and free discussion has indeed been the first article of our faith. We have founded our political system on it. It has been the safeguard of every religious, political, philosophical, economic, and racial group amongst us. We have

counted on it to keep us from embracing what is cheap and false; we have trusted the common sense of our people to choose the doctrine true to our genius and to reject the rest. This has been the one single outstanding tenet that has made our institutions the symbol of freedom and equality. We have deemed it more costly to liberty to suppress a despised minority than to let them vent their spleen. We have above all else feared the political censor. We have wanted a land where our people can be exposed to all the diverse creeds and cultures of the world.

"There comes a time when even speech loses its constitutional immunity. Speech innocuous one year may at another time fan such destructive flames that it must be halted in the interests of the safety of the Republic. That is the meaning of the clear and present danger test. When conditions are so critical that there will be no time to avoid the evil that the speech threatens, it is time to call a halt. Otherwise, free speech which is the strength of the Nation will be the cause of its destruction.

"Yet free speech is the rule, not the exception. The restraint to be constitutional must be based on more than fear, on more than passionate opposition against the speech, on more than a revolted dislike for its contents. There must be some immediate injury to society that is likely if speech is allowed."

Mr. Justice Douglas said that "If this were a case where those who claimed protection under the First Amendment were teaching the techniques of sabotage, the assassination of the President, the filching of documents from public files, the planting of bombs, the art of street warfare, and the like, I would have no doubts. The freedom to speak is not absolute; the teaching of methods of terror and other seditious conduct should be beyond the pale along with obscenity

and immorality. This case was argued as if those were the facts. The argument imported much seditious conduct into the record. That is easy and it has popular appeal, for the activities of Communists in plotting and scheming against the free world are common knowledge. But the fact is that no such evidence was introduced at the trial." The books on Leninism and Communism, etc., which were involved in the Dennis case were commented on by Mr. Justice Douglas as follows: "Those books are to Soviet Communism what *Mein Kampf* was to Nazism. If they are understood, the ugliness of Communism is revealed, its deceit and cunning are exposed, the nature of its activities becomes apparent, and the chances of its success less likely. That is not, of course, the reason why petitioners chose these books for their classrooms. They are fervent Communists to whom these volumes are gospel. They preached the creed with the hope that some day it would be acted upon." Mr. Justice Douglas then continued: "The vice of treating speech as the equivalent of overt acts of a treasonable or seditious character is emphasized by a concurring opinion [Mr. Justice Jackson], which by invoking the law of conspiracy makes speech do service for deeds which are dangerous to society. . . . I repeat that we deal here with speech alone, not with speech *plus* acts of sabotage or unlawful conduct. Not a single seditious act is charged in the indictment. To make a lawful speech unlawful because two men conceive it is to raise the law of conspiracy to appalling proportions. That course is to make a radical break with the past and to violate one of the cardinal principles of our constitutional scheme."

I repeat that in the case at bar we haven't even had speech let alone any facts. Neither prejudice nor hate nor senseless fear should be the basis for abridging freedom of speech.



"Free speech—the glory of our system of government—should not be sacrificed on anything less than plain and objective proof of danger that the evil advocated is imminent."

American democracy is no accident; it is the majestic product of a vigorous, experimental and passionate history. This nation came into existence as the result of a purposeful struggle against governmental tyranny. The heritage of Thomas Jefferson—"Rebellion to Tyrants is obedience to God"—remains with us, embodied in our institutions and traditions. The spirit of Inquisition, which was abjured in the Declaration of Independence, has always been obnoxious to our political and social life. Equally, it has found no tolerance in our legal codes, our legal traditions, our juridical morality. Due process has meant a fair, legal process. Liberty has meant genuine, concrete liberty for the individual citizen—his right to freedom from search and seizure, his right to privacy, his right to be free of persecutory inquisition on grounds of race, color, creed, political opinion or association.

At this truly grave moment in our nation's growth it is in the power of this court to speak forthrightly in the language of Coke, Camden, and Bradley, in the language of the many illustrious jurists for whom the frenzy of the political marketplace never blurred the meaning of freedom.

"Under our constitutional system courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are nonconforming victims of prejudice and public excitement. . . . No higher duty, nor more solemn responsibility, rests upon this Court, than that of translating into living law and maintaining this constitutional shield deliberately planned and inscribed for the

benefit of every human being subject to our Constitution—of whatever race, creed or persuasion.” (*Chambers v. Florida* (1940), 309 U.S. 227, 241 [60 S.Ct. 472, 84 L.Ed. 716].)

What is required at this moment of this court is not innovation, but rather a restatement of the growing principles by which the history of the western world has given dignity to its citizens: “Historical liberties and privileges are not to bend from day to day because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. A community whose judges would be willing to give it whatever law might gratify the impulse of the moment would find in the end that it had paid too high a price.” (Cardozo, J., *Matter of Doyle*, 257 N.Y. 244, 268 [177 N.E. 489].)

The issue is momentous, of far-reaching implication, and the ruling of the court will be a categorical imperative whose cumulative effect will be seen only in the fullness of time. “Nothing less is involved than that which makes for an atmosphere of freedom as against a feeling of fear and repression for society as a whole. The dangers are not fanciful. We too readily forget them. Recollection may be refreshed as to the happenings after the first World War by the ‘Report Upon the Illegal Practices of the United States Department of Justice,’ which aroused the public concern of Chief Justice Hughes (then at the bar), and by the little book entitled ‘The Deportations: Delirium of Nineteen-Twenty’ by Louis F. Post, who spoke with the authoritative knowledge of an Assistant Secretary of Labor.” (Frankfurter, J., dissenting, *Harris v. United States* (1947), 331 U.S. 145, 173 [67 S.Ct. 1098, 91 L.Ed. 1399].)

Devotion to Americanism often calls for something other than conformity. The plaintiff in the present case knew that to protect the Constitution, indeed merely to invoke its pro-

tection for all Americans, required courage, and that hardihood to challenge a wrong done under color of authority was as indispensable to good citizenship as would be, in other circumstances, unquestioning obedience. President Thomas Jefferson wrote to Benjamin Rush in a letter dated April 21, 1803: "It behooves every man who values liberty of conscience for himself, to resist invasions of it in the case of others; or their case may, by change of circumstances, become his own. *It behooves him, too, in his own case to give no example of concession, betraying the common right of independent opinion, by answering questions of faith which the laws have left between God and himself.*" (Emphasis supplied.)

In the last analysis, when the moment of decision comes, to the private citizen as well as to the judge, it is in the quiet of his own mind and in the glow of his own courage that Americanism thrives. And it is in the cumulative decision of millions, citizen as well as official, that Americanism is reborn each moment.

For the foregoing reasons, I would reverse the judgment.

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FEB 28 1958

JOHN T. FEY, Clerk

# In the Supreme Court

OF THE

**United States**

OCTOBER TERM, 1957

**No. 483, 484**

LAWRENCE SPEISER,

*Appellant,*

vs.

JUSTIN A. RANDALL, as Assessor of Contra Costa County, State of California,

No. 483

*Appellee.*

DANIEL PRINCE,

*Appellant,*

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation,

No. 484

*Appellee.*

## APPELLANTS' CONSOLIDATED OPENING BRIEF.

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# In the Supreme Court

OF THE  
United States

OCTOBER TERM, 1957

Nos. 483, 484

LAWRENCE SPEISER,

*Appellant,*

vs.

JUSTIN A. RANDALL, as Assessor of Contra  
Costa County, State of California,

*Appellee.*

No. 483

DANIEL PRINCE,

*Appellant,*

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation,

*Appellee.*

No. 484

## APPELLANTS' CONSOLIDATED OPENING BRIEF.<sup>1</sup>

### OPINIONS BELOW.

In No. 483, the trial court, consisting of the five Superior Court Judges of the county in which the action was filed, sitting en banc, rendered a written

<sup>1</sup>The two cases were consolidated by order of this Court (R. 71).

opinion, which is unreported, and which does not appear in the record, but is attached as Appendix A to the Jurisdictional Statement on file herein.

In No. 484, the opinion of the trial court, also unreported, appears in the record at R. 50-59. The opinions of the court below in both cases (R. 22, 64) are reported at 48 Cal. (2d) 903 and 472, 311 P. (2d) 546 and 544; the opinions of the dissenting justices in the court below (R. 23, 67) are reported in 48 Cal. (2d) at 904 and 475, 311 P. (2d) at 547 and 546.

In the cases at bar, both the majority and dissenting opinions in the court below cite reliance upon the reasons set forth in their respective opinions in the case of *First Unitarian Church v. County of Los Angeles*, on file with this Court on a petition for a writ of certiorari as October Term 1957, No. 382. The opinion of the court below in the *First Unitarian Church* case is set forth in the record of that case on page 35, and is reported at 48 Cal. (2d) 419, 311 P. (2d) 508. There were two dissenting opinions in the court below; one by Justice Traynor, concurred in by Chief Justice Gibson; the other by Justice Carter. The opinions of the dissenting justices in the court below in the *First Unitarian Church* case are in the record of that case on pages 57 and 65, and are reported in 48 Cal. (2d) at 443 and 451, 311 P. (2d) at 522 and 527.

### **JURISDICTION.**

These are reviews of judgments (R. 23, 67) in civil cases, of the Supreme Court of the State of California, entered on April 24, 1957 (R. 22, 64). Timely notices of appeal were filed with the Supreme Court of the State of California on May 27, 1957, and enlargements of time to file jurisdictional statements were granted until September 24, 1957, by the Chief Justice of that court and filed therewith on July 10, 1957.

A consolidated jurisdictional statement for both cases, pursuant to Rule 15(3) of the Rules of the Supreme Court, was filed on September 19, 1957. (R. Cover Page.) An order noting probable jurisdiction and consolidating the cases was made on November 25, 1957. (R. 71.)

The jurisdiction of this Court rests on 28 U.S.C. Sec. 1257(2).

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### **CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.**

Only the citations of the constitutional and statutory provisions are included here. The full text is set forth in Appendix A, attached hereto. The citations are as follows:

California veterans property tax exemption:

*California Constitution*, Art. XIII, Sec. 11½:

California constitutional amendment denying all tax exemptions to advocates of the proscribed doctrines:

*California Constitution*, Article XX, Sec. 19(b);

Implementing legislation requiring a non-disloyalty declaration as a condition for receiving property tax exemptions:

*California Revenue and Taxation Code*, Sec. 32  
(Calif. Stats. 1953, c. 1503, p. 3114, Sec. 1);

and corporation income tax exemptions:

*California Revenue and Taxation Code*, Sec. 23705 (Calif. Stats., 1953, c. 1503, p. 3115, Sec. 2);

*United States Constitution*, First Amendment;

*United States Constitution*, Fourteenth Amendment, Sec. 1;

*United States Constitution*, Article VI, Clause 2.

#### **QUESTIONS PRESENTED FOR REVIEW.**

In 1952 Section 19 of Article XX of the Constitution of the State of California, was adopted which denies any tax exemption to advocates of the overthrow of the government of the United States by force, violence, or other unlawful means and to advocates of the support of a foreign government against the United States in the event of hostilities.

In the following year, the legislature adopted Section 32 of the Revenue and Taxation Code of California, requiring applicants (organizational or in-

dividual) for property tax exemptions (with the exception of applicants for the householders' exemption) to sign a declaration that they do not advocate the proscribed doctrines.<sup>2</sup>

The questions presented are whether these enactments, on their faces and as construed and applied, are unconstitutional in being repugnant to the United States Constitution in the following respects:

1. In violating the due process clause of the Fourteenth Amendment and through it, the First Amendment to the United States Constitution in abridging freedom of speech and assembly:

(a) By infringing on these freedoms while bearing no reasonable relationship to any evil sought to be controlled by the enactments nor any reasonable relationship to the public welfare;

(b) By infringing on these freedoms without any showing of a clear and present danger existing by reason of the receipt of tax exemptions by advocates of the proscribed doctrines or by those who, for reason of conscience, refuse to sign a declaration that they do not so advocate;

(c) By abridging these freedoms by imposing a prior restraint in that the language of these acts are vague and uncertain in their terms.

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<sup>2</sup>At the same time the legislature adopted Revenue and Taxation Code Section 23705, requiring the same declaration on any return filed by any corporation claiming a tax exemption. These two sections of the Revenue and Taxation Code are the only ones which have been passed requiring the non-disloyalty declaration as a condition for tax exemption.

2. By violating the due process clause of the Fourteenth Amendment to the United States Constitution in imposing an unconstitutional condition upon the enjoyment of a privilege in requiring relinquishment of the right to freedom of speech and assembly, as a condition for receiving a tax exemption.

3. By violating the due process clause of the Fourteenth Amendment of the Constitution of the United States, in taking away liberty and property without trial or hearing, accusation, right to confrontation, right to cross-examination, and in subverting the presumption of innocence, and altering the rules of evidence.

4. By violating the equal protection clause of the Fourteenth Amendment to the United States Constitution in arbitrarily and discriminatorily denying tax exemptions to the appellants while granting them to all others in similar circumstances.

5. By violating the equal protection clause of the Fourteenth Amendment to the United States Constitution in unreasonably and discriminatorily requiring a declaration of non-advocacy of the proscribed doctrines for only certain property tax exemptions and the corporate income tax exemptions, but not for the householders' and all other tax exemptions.

6. By violating the supremacy clause of the Constitution in attempting to regulate and restrict sedition, a field entirely within the province of the federal government, and which the Congress of the United States, by legislative enactments, has preempted and wholly occupied.



**STATEMENT OF THE CASE.**

The facts in each case are not in dispute and are based on stipulations of facts introduced in the respective trial courts. (R. 18, 45.) Appellants are both veterans of World War II, and as such are qualified for the veterans property tax exemption, pursuant to the provisions of Section 11 $\frac{1}{4}$  of Article XIII of the California Constitution, which provides that every resident of the State who is honorably discharged from one of the armed forces shall receive a property tax exemption in the amount of \$1,000, provided that neither he nor his spouse own property in excess of \$5,000. (R. 18, 45.) The appellee in No. 483 is the Assessor of the County in which the appellant lived. (R. 19.) The appellee in No. 484 is the municipality in which the appellant was living and maintained a place of business. (R. 45, 47.)

Both appellants in the spring of 1954 filed duly executed applications for the veterans property tax exemption with the exception that in each case they struck out and refused to execute that part of the tax form which contained a declaration as to non-advocacy of the doctrines proscribed by Article XX, Section 19(b) of the California Constitution and implemented by Section 32 of the Revenue and Taxation Code. (R. 19, 47.) The appellees in each case denied the appellants' applications for the veterans property tax exemption "upon the sole ground that the said application for the veterans tax exemption did not contain the declaration as required" by Section 32 of the Revenue and Taxation Code. (R. 20, 48.)

The language in issue in the applications arose from the passage on November 4, 1952 of Section 19(b), Article-XX of the California State Constitution denying all tax exemptions to advocates of the forceful overthrow of the United States Government or of the support of a foreign government against the United States in the event of hostilities, and the passage in the following year by the state legislature of Section 32 of the Revenue and Taxation Code, which required that all applicants for property tax exemptions (with the exception of applicants for householders' exemptions) sign a declaration of non-advocacy as a condition for receiving property tax exemptions. (R. 18, 19, 46, 47.)

After his application was denied, the appellant in No. 483 filed suit for declaratory relief in the Superior Court of Contra Costa County, pursuant to California law. (R. 3.) All five Superior Court Judges of that county, for the first time in its history, sat en banc on the case and ruled unanimously that both the Constitutional amendment and Revenue and Taxation Code Section 32 were unconstitutional in violating the free speech and due process provisions of the Federal Constitution. They also ruled that Section 32 violated the equal protection clause of the Fourteenth Amendment, since the declaration of non-advocacy was not required from all applicants for all exemptions. (R. 10-17.)

In the second case at bar, after the application of the appellant in No. 484 was denied, he paid his taxes under protest, pursuant to the provisions of Califor-

nia law (Revenue and Taxation Code Sections 5136-5137) for testing the validity of the tax assessed. (R. 48-49.) Thereafter, as provided by California law (Revenue and Taxation Code Sections 5138-5139), the appellant in No. 484 filed suit for recovery of taxes paid under protest and for declaratory relief. (R. 48, 49.) The trial court judge in No. 484 ruled against the constitutional arguments raised by the appellant and upheld both the constitutional provision and the Revenue and Taxation Code section. (R. 50-62.)

On appeal to the California Supreme Court, the court below by 4 to 3, reversed the judgment of the five Contra Costa Superior Court Judges in No. 483 and affirmed the San Francisco Superior Court judgment in No. 484. The holdings against the appellants in both cases were on the federal grounds which had been raised by the appellants throughout the proceedings. Chief Justice Gibson, Justice Traynor, and Justice Carter dissented. (R. 23, 67.) Both the majority and dissenting opinions relied upon the reasons set forth in their respective opinions in the case of *First Unitarian Church of Los Angeles v. County of Los Angeles* on certiorari, October Term 1957, No. 382.

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#### **SUMMARY OF THE ARGUMENT.**

California adopted Section 19(b), Article XX of the State Constitution denying all tax exemptions to advocates of the forceful overthrow of the United States Government or the support of a foreign government against the United States in the event of hostilities,

and the State Legislature attempted to implement the constitutional provision by requiring all applicants for property tax exemptions (with the exception of householders' exemption) to sign a declaration of non-advocacy as a condition for tax exemptions.

This Court in the past has upheld laws and declarations of non-advocacy only where there existed some great danger or overriding consideration deemed sufficient to warrant an infringement on First Amendment freedoms, such as maintaining the integrity and efficiency of the public service, *Garner v. Board of Public Works*, 341 U.S. 716, or in attempting to prevent the danger to interstate commerce posed by political strikes, *American Communications Assn. v. Douds*, 339 U.S. 382. In no case has this Court allowed an abridgement of First Amendment rights without first satisfying itself that the nature of the evil perceived by the legislature is of sufficient magnitude to warrant the infringement.

The majority below in construing the provisions here in issue ruled that the limitation imposed by the constitutional amendment "is not a limitation on mere belief, but is a limitation on action. . . . Advocacy constitutes action and the instigation of action, not mere belief or opinion." Under this interpretation, all advocacy is penalized, whether or not it presents a clear and present danger, since the majority only recognizes two categories, belief and action, and it throws advocacy into the category of action.

The majority below stated the primary purpose of the enactments was to protect the state's "revenue

raising program from subversive exploitation." There were no legislative hearings or findings that there were any dangers to the revenue raising program of the state. In contrast to this situation, Congress collected a great mass of data showing the danger to interstate commerce posed by political strikes in *American Communications Assn. v. Douds*, 339 U.S. 382. Similar denials of privileges for refusal to sign non-disloyalty declarations, were struck down in *Danskin v. San Diego Unified School District*, 28 Cal. (2d) 536, involving use of a public auditorium, and *Lawson v. Housing Authority of Milwaukee*, 270 Wis. 269, 70 N.W. (2d) 605, involving public housing tenancy.

The majority below states that one of the purposes in granting tax exemptions is to maintain the loyalty of the people. Loyalty may not be promoted at the expense of the First Amendment, *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 633.

The real purpose of the provisions here involved is to penalize advocates of the proscribed doctrines by "hitting such persons or organizations in the pocket-book". It is improper to infringe on First Amendment rights for such a purpose.

Even though a tax exemption is a privilege, the arbitrary denial of an exemption, conditioned on non-advocacy, results in an infringement on freedom of speech—albeit an indirect one. Such a condition is an unconstitutional condition, *Frost v. Railroad Commission of California*, 271 U.S. 583.

The Constitutional provision, being self-executing, and by its terms covering all tax exemptions in the

state, presents a substantial infringement on free speech affecting the rights and liberties of all California residents and organizations since almost everyone in the state receives some type of tax exemption.

Denying a tax exemption is not a reasonable means of protecting the state or nation against violent overthrow or conquest, nor, of protecting the state's revenue raising program. All of the various exemptions granted by the State of California have different and varied purposes. There is not one, single overriding purpose which has any reasonable relationship to the provisions here in issue.

Utilizing an expurgatory oath to determine which tax exemptions should be denied is an improper method, since there is absolutely no evidence that any group of exemptees advocate the proscribed doctrines. Although test oaths may be required under very limited circumstances from a limited group, such as government employees or labor leaders, to determine qualifications, they may not be utilized on the populace as a whole, since they subvert the presumption of innocence. It is a fallacious inference under such conditions to assume that a failure or refusal to sign a declaration of non-advocacy is any proof at all of advocacy.

Section 32, in excluding householders from filing declaration of non-advocacy violates the equal protection clause, because the constitutional amendment covers all tax exemptions. The legislature may not require such declarations from some tax exemptees but not all. The effect of the provisions in issue is to



deny any exemption to aliens, since no alien can truthfully say he does not advocate the support of a foreign government against the United States in the event of hostilities. Such a denial of tax exemption, solely because of alienage violates the equal protection clause. *Truax v. Raich*, 239 U.S. 23.

Penalizing peacetime advocacy of the support of a foreign government against the United States in the event of hostilities violates the supremacy clause of the constitution in attempting to regulate and restrict sedition, a field entirely within the province of the federal government, and which the Congress of the United States, by legislative enactment, has preempted and wholly occupied, 18 U.S.C.A. 2381, et seq.; *Pennsylvania v. Nelson*, 350 U.S. 497.

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## ARGUMENT.

### I.

**THE CONSTITUTIONAL AMENDMENT AND SECTION 32 OF THE REVENUE AND TAXATION CODE ON THEIR FACES, AND AS CONSTRUED AND APPLIED, VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION IN ABRIDGING FREEDOM OF SPEECH AND ASSEMBLY.<sup>3</sup>**

- A. Freedom of Speech and Assembly May Be Infringed Only to Prevent Some Substantial Evil Which Presents a Clear and Present Danger, or for Some Other Equally Overriding Consideration.**

It is well established to the point of redundancy that the freedoms set forth in the First Amendment

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<sup>3</sup>For ease of reference, the State Constitution provision will be referred to as Article XX or the Constitutional amendment, al-

of the United States Constitution are protected under the due process clause of the Fourteenth Amendment against infringement by the states. (*Thomas v. Collins*, 323 U.S. 516, 530; *DeJonge v. Oregon*, 299 U.S. 353, 364.)

General legislation by states will be upheld, where the legislative bodies or the people had a "rational basis" for acting, "but freedoms of speech and of press, of assembly, of worship, may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect." (*West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 639.)

The cases here in issue involve not only the disqualification for tax exemption based on non-advocacy, but also, a declaration of non-advocacy as a means of implementation. This Court in the past has upheld such provisions only where there existed some grave danger or overriding consideration deemed sufficient to warrant an infringement on First Amendment freedoms, such as maintaining the integrity and efficiency of the public service (*Garner v. Board of Public Works*, 341 U.S. 716) or in attempting to prevent the danger to interstate commerce posed by political strikes. (*American Communications Association v. Douds*, 339 U.S. 382.) Of a similar nature is *Adler v.*

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though we are referring to Section 19(b), Article XX of the Constitution of the State of California. The State Statute will be referred to as Section 32.

*Board of Education*, 342 U.S. 485, which involves a New York State loyalty program for public school teachers. The *Adler* case, along with most of the state cases cited by the majority below, still falls under the general rule that an employing governmental body, in order to preserve the integrity of the public service, may properly limit an employee's freedom of advocacy or membership in certain organizations, as an incidental effect in setting qualifications for employment. However, this Court has held that even that objective is not sufficient to sustain a law which clearly crosses over the line of demarcation set by the due process clause and which punishes the "innocent with the guilty". (*Wieman v. Updegraff*, 344 U.S. 183.)

This Court succinctly stated the task of the courts in such cases in *American Communications Association v. Douds*, 339 U.S. 382, at p. 399 when it said:

"When particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional partial abridgment of speech, the duty of the courts is to determine which of these two conflicting interests demands the greater protection under the particular circumstances presented."

In no case has this Court allowed an abridgment of the First Amendment without first satisfying itself that the nature of the evils perceived by the legislatures is of sufficient magnitude to warrant the infringement. These cases go no further; the evil is examined, whether it be in the area of political strikes, education, or public service, and the necessary infringement of

First Amendment rights is allowed, *but only to the extent absolutely necessary to meet the evil.*

**B. Free Speech Is Infringed Here Under the Interpretation of the Majority Below in Holding That All Advocacy of the Proscribed Doctrines May Be Penalized.**

This Court has just recently examined the field of advocacy and free speech in *Yates v. United States*, 354 U.S. 298. In that case this Court said (at p. 318):

"... We are thus faced with the question of whether the Smith Act prohibits advocacy and teaching of forcible overthrow as an abstract principle, divorced from any effort to instigate action to that end, as long as such advocacy or teaching is engaged in with evil intent. We hold that it does not."

The decision by the court below was made prior to the decision of this Court in the *Yates* case. However, this Court's decision in *Yates* did not purport to set forth new law, but merely to reemphasize the dividing line between speech which may be penalized and speech which may not. The majority in the court below displayed a complete lack of understanding as to where the line should properly be drawn, which is clearly reflected in its statement in the majority opinion of the companion case, *First Unitarian Church v. County of Los Angeles*, in which it states:<sup>4</sup>

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<sup>4</sup>Since both the majority and dissenters in the cases at bar cite reliance on their reasons set forth at length in their respective opinions in the case of *First Unitarian Church v. County of Los Angeles* (O.T. 1957, No. 382) our analysis of the reasoning of the court below will be with respect to the *First Unitarian Church* opinions rather than to the relatively short memorandum opinions

“ . . . In the present case it is apparent that the limitation imposed by Section 19 of Article XX as a condition of exemption from taxation, is *not a limitation on mere belief but is a limitation on action*—the advocacy of a certain proscribed conduct. What one may merely believe is not prohibited. It is only advocates of the subversive doctrines who are affected. *Advocacy constitutes action and the instigation of action, not mere belief or opinion. . . .*” (R. No. 382, p. 47.) (Emphasis added.)

It is evident that the majority below has failed to understand the distinction which this Court has drawn between advocacy which may be penalized—(not because advocacy has been magically transformed into action)—and advocacy which may not. Advocacy is not action, nor has it ever been so held by this Court. Even *Gitlow v. New York*, 268 U.S. 652, cited by the majority of the court below as authority for the proposition that advocacy constitutes action, does not so hold, as this Court pointed out recently in *Yates v. United States*, supra. The impropriety of the construction given by the majority below was clearly demonstrated by the dissenters. Justice Traynor, writing for himself and Chief Justice Gibson stated:

“ . . . The state provisions in question penalize advocacy in a totally different context from that in the *Dennis* case. The penalty falls indiscriminately on all manner of advocacy, whether it be a

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in the cases at bar. Accordingly, all references to the opinions of the court below will be to the opinions in the *First Unitarian Church* case and will be referenced to the record in *that* case, e.g., R. No. 382, p. 35.

call to action or mere theoretical prophesy that leaves the way open for counter-advocacy by others. Moreover, with regard to advocacy of support of a foreign government, the state provisions penalize not only advocacy during actual hostilities but also advocacy during peacetime of action during hostilities that may occur, if at all, in the remote future. . . ." (R. No. 382, p. 60.)

The majority below, it is true, does discuss the case of *Dennis v. United States*, 341 U. S. 494, but it misconstrued this Court's holding in that case and the test to be applied. In discussing the advocacy proscribed by the Smith Act, the majority below stated:

" . . . It must be said that *such advocacy from whatever source poses a threat to our government*, and that the gravity of the evil is *not to be materially* discounted by its improbability from the meaning of the test employed in the Dennis case. . . ." (Emphasis added.) (R. No. 382, p. 53.)

It is evident that the majority of the court below, for all intents and purposes, discards the clear and present danger doctrine completely. There is to be no looking at circumstances. It is the advocacy *per se* that presents a danger.

The construction of "advocacy" given by the majority below is no narrow one. It draws the line at mere belief. Discussion or attempts to persuade all fall within the ban, since the majority only recognizes two categories, "belief" and "action". The majority throws speech—any kind of speech—into the same pot with "action". (cf. *Butler v. Michigan*, 352 U.S. 380.)



It well may be that some advocacy, as well as some other types of speech, can be prohibited or penalized—not, however, because advocacy is semantically transformed into conduct. Instead, it is because a particular advocacy or speech presents some clear and present danger of bringing about some substantial substantive evil which the state has a right to prevent and from which the “degree of imminence is extremely high”. (*Bridges v. California*, 314 U.S. 252, 263.)

This rule even applies to the advocacy of such doctrines as the overthrow of the government by force and violence or the support of a foreign government against the United States in the event of hostilities. Some advocacy of the violent overthrow of the government or of any other crime may be prohibited, or penalized but some may not without running afoul of the First Amendment. The dividing line (and drawing it is admittedly a difficult problem) is whether the advocacy constitutes an incitement to immediate or probable action. As Justice Jackson stated in his concurring opinion in *United States v. Dennis*, 391 U.S. 494, at p. 572:

“Of course, it is not easy to distinguish teaching or advocacy in the sense of incitement from teaching or advocacy in the sense of exposition or explanation. It is a question of fact in each case.”

Advocacy of the forceful overthrow of our government or the support of a foreign government in the event of hostilities probably is, and properly so, abhorred by most of our citizenry. But advocacy of these

or any other doctrines, is speech, pure and simple. If we accept the majority's below classification that any "advocacy" may be prohibited, whether or not there is any likelihood or probability that it will be acted upon—then we have placed the control and regulation of speech in the same category as the control and regulation of action. This is something which the First Amendment, as interpreted by this Court, holds may not be done. A village radical in the village square can still exhort his fellow townsmen to overthrow the government or march on the town hall, if it is evident from the surrounding circumstances that no one is taking him seriously or will be incited to action.

**C. There Is No Evidence of Any Danger to Any Legitimate Interest of the State Justifying Infringement Upon Free Speech.**

1. No danger of subversive exploitation of the state revenue raising program.

The majority opinion in the court below states what it conceives to be the major purpose of the provisions here in issue as follows:

"It may properly be said that the primary purpose of the people of the state in the enactment of section 19 of article XX was to provide for the protection of the revenues of the state from impairment by those who would seek to destroy it by unlawful means." (R. No. 382, p. 41.)

The court below paraphrases this at a later point as being "(t)he interest of the state in protecting its revenue raising program from subversive exploitation". (R. No. 382, p. 51.)

These statements leave something to be desired in the realm of clarity and unambiguity. One possible meaning is that the purpose of the provision is to prevent violent revolution or conquest of the country by a foreign power, since presumably either event would result in an impairment to the revenue raising program of the state. However, if that is the supposed danger, then, of course, there is the very real due process objection (to be discussed, *infra*,<sup>5</sup>) as to whether the means chosen i.e. denial of tax exemption, is related in any reasonable way to the end sought, i.e. preventing revolution or conquest.

It would appear in any case that there should be some evidence before the legislature or the court of a danger (of some kind or another) to the revenue raising program of the state requiring protection "from impairment by those who would seek to destroy it by unlawful means."

When these provisions were presented to the legislature, there was no consideration, nor even any statement of the evils sought to be met by the constitutional amendment. There were no legislative hearings or findings. There has not even been any charge that any tax exempt group or individual advocated the proscribed doctrines. Therefore the legislative objective in passing the Constitutional amendment involved here must be left to conjecture.

In contrast to this situation, this Court, in *American Communications Association v. Douds*, 339 U.S.,

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<sup>5</sup>See Section II of this brief.

p. 493, pointed to the great mass of data collected by Congress showing the danger to interstate commerce posed by political strikes. No similar evidence of any danger to California's revenue program was presented or alluded to by the majority below. Although the majority purported to apply the "clear and present danger" test, the opinion is devoid of any indication of the existence or magnitude of a threat of subversive exploitation of the state revenues.

In *Douds*, it was pointed out that merely because the court upheld the oath there, did not mean that such an oath can be constitutionally exacted from everyone under any and all circumstances. (339 U.S. at p. 403.) It carefully limited its holding to the situation where advocates of certain doctrines *by reason of their position* clearly presented a great danger to the country. Just as in *Dennis v. United States*, 341 U.S. 494, the danger arose *not* from the advocacy of the proscribed doctrines, but from a *combination* of two factors, i.e., that advocates of the proscribed doctrines were also in extremely powerful and sensitive positions, and it was this combination which warranted preventive action by the community. This was clearly spelled out in *Douds*, 339 U.S. at p. 403, where the court said:

"... The 'discouragements' of Sec. 9(h) proceed not against the groups or beliefs identified therein, *but only against the combination of those affiliations or beliefs with occupancy of a position of great power over the economy of the country.* Congress has concluded that substantial harm, in

the form of direct positive action, may be expected from *that combination*. . . ." (Emphasis added.)

There have been several cases in various state courts which have reaffirmed the principle that there must be a showing of danger to some substantial interest of the community before there may be a valid inquiry as to whether a person advocates certain proscribed doctrines or belongs to any proscribed organization.

In California, such a case had previously gone to the State Supreme Court, which struck down an oath similar to a portion of the oath here involved under analogous circumstances. The case is *Danskin v. San Diego Unified School District*, 28 Cal. (2d) 536 (1946), which arose under the California Civic Center Act. The Act provided that school boards grant permission to use the school facilities to civic organizations, but barred their use by individuals or organizations advocating the forceful overthrow of the present form of government of the United States or of the State. To implement this law, the San Diego School Board adopted a resolution requiring that all applicants for the use of school auditoriums sign an oath, which stated, *inter alia*:

"I do not advocate and I am not affiliated with any organization which advocates or has as its object or one of its objects the overthrow of the present Government of the United States or of any State by force or violence, or other unlawful means".

The California Supreme Court in that case held that the oath condition imposed was unconstitutional

on the grounds that even if an organization seeking to use the auditorium did in fact advocate these doctrines, *there was no showing that the use of the auditorium would in any way endanger the safety of the community.*

There the State Supreme Court held that the rights of even advocates of the forceful overthrow of the government could not be infringed in the absence of a clear and present danger and in a manner unrelated to protecting the security of the community.

Likewise, appellate courts have struck down non-disloyalty declarations as a condition for public housing tenancy. One of the latest cases is *Lawson v. Housing Authority of Milwaukee*, 270 Wis. 269, 70 N.W. (2d) 605 (certiorari denied, 350 U.S. 882), in which the Wisconsin Supreme Court, in a *unanimous* opinion, held unconstitutional such a declaration. The Court there compared the purpose of such a requirement and the circumstances presented with that in the *Douds* case and concluded:

"... It is beyond our power to comprehend how the evil which might result from leasing units in a federally aided housing project to tenants who are members of organizations designated subversive by the Attorney General is in any way comparable in substantiality to that which would result to the general welfare through Communists in control of labor organizations disrupting commerce by calling strikes to carry out Communist Party policy. This Court deems the possible harm which might result in suppressing the freedom of the First Amendment outweigh any



threatened evil posed by the occupation by members of subversive organizations of units in federally aided housing projects. . . ." (70 N.W. (2d) at p. 615<sup>a</sup>; 270 Wis., at pp. 287-288.)

2. No other legitimate purpose for the provisions in issue has been stated or identified justifying an infringement on free speech.

In the cases of *Danskin v. San Diego Unified School District*, 28 Cal. (2d) 536, and *Lawson v. Milwaukee Housing Authority*, 270 Wis. 269, 70 N.W. (2d) 605, supra, there was lacking any demonstrable danger to the community or to any public interest from the advocacy of the proscribed doctrines and we have an exactly parallel situation here.

"However, the majority below suggests that there are other all-encompassing interests "with which the state is concerned and which it is attempting to promote by granting exemptions from taxation. Included, is the interest of the state in maintaining the loyalty of its people, thus safeguarding against its violent overthrow by internal or external forces". (R. No. 382, pp. 51-52.)

In effect, the majority is saying that all tax exemptions are granted in part, at least, to promote loyalty and that the provisions here in issue are designed to prevent stultification of this purpose.

The majority below states (R. No. 382, p. 52):

"... Obviously, a program of tax exemption designed to promote adherence to the principles of

<sup>a</sup>See also unanimous decision in *Chicago Housing Authority v. Blackman* (1954), 4 Ill. (2d) 319, 122 N.E. (2d) 522.

our government, but constrained to include within its bounty persons or organizations actively advocating subversion and the support of enemies in time of hostilities would be wholly without reason and result in its own defeat. . . ."

The court below is obviously wrong on this point. There is no over-all purpose encompassing all tax-exemptions. They were all granted for entirely different purposes as we will discuss more fully later. If we are to accept the majority's premise, then we must say that the objective of fostering loyalty must equally encompass not only veterans but also, cemeteries,<sup>7</sup> fruit and nut growing trees,<sup>8</sup> growing crops,<sup>9</sup> and surviving heirs.<sup>10</sup>

Consideration of these other exemptions and situations is perfectly permissible, since "proof of an abuse of power in the particular case has never been deemed a requisite for attack on the constitutionality of a statute purporting to license the dissemination of ideas." (*Thornhill v. Alabama*, 310 U.S. 88 at p. 97.)

In any case, it is a little unclear how loyalty is fostered by requiring a cemetery to file a non-disloyalty declaration, or a farmer to file one because he is growing fruit and nut-bearing trees or some other crop.

However, even the very laudable motive of promoting loyalty is limited by the First Amendment. It

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<sup>7</sup>Article XIII, Section 1(b), California Constitution.

<sup>8</sup>Article XIII, Section 1, California Constitution.

<sup>9</sup>Article XIII, Section 12 $\frac{3}{4}$ , California Constitution.

<sup>10</sup>Revenue and Taxation Code, Section 13801, et seq.

was held by this Court that a compulsory pledge of allegiance could not be exacted from school children even for the purpose of promoting loyalty, unless some substantial danger to the state required it. (*West Virginia State Board of Education v. Barnette*, (1943), 319 U.S. 624, 633.)

No such substantial danger has been indicated or even alluded to in the instant case.

3. The real and sole purpose of the provisions here involved is penalization.

Actually, the *real* reason for denying exemptions to advocates of these proscribed doctrines is not the contentions made by the majority below at all, but rather, the one found in the argument to the voter, where it states "this will have the effect of hitting such persons or organizations in the pocketbook."<sup>11</sup> In other words, it is a form of penalization, purely and simply. Article XX, Section 19 has *nothing*, whatever, to do with negating the purposes of exemptions previously granted. It is based entirely on the theory that people who advocate these doctrines should not receive any special benefit from the state because they should be punished in every way possible.

This was clearly recognized in the public housing oath case of *Lawson v. Milwaukee Housing Authority*, (1955), 270 Wis. 269, 70 N.E. (2d) 605. The Wisconsin Supreme Court specifically noted that one of the prior housing cases which was subsequently

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<sup>11</sup>See Arguments to the Voters lodged with the record of *First Unitarian Church v. County of Los Angeles*, October Term, 1957, No. 382.

overruled (*Rudder v. United States*, 105 A. (2d) 741, rev. in 226 Federal (2d) 51), was based on "the theory that public housing is a privilege which need be made available only to 'loyal tenants'." (70 N.W. (2d) at p. 613.) The court rejected this reason as being a sufficient basis for denying the privilege of public housing tenancy since this denial indirectly infringed on freedom of speech and assembly.

This was also clearly recognized by the California Supreme Court in the case of *Danskin v. San Diego Unified School District*, (1946) 28 Cal. (2d) 536, even though that opinion preceded *American Communications Association v. Douds*, 339 U.S. 382, *supra*. There, too, it was recognized that the legislature was not at all concerned with the danger of speech by advocates of forceful overthrow of the government since they were still free to advocate elsewhere, nor with the danger to the public forum program under the Civic Center Act. Likewise, the court there concluded:

"When one searches deeper for the reason that motivates the prohibition of such meetings, there is no escaping the conclusion that the Legislature denies access to a forum in a school building to 'subversive elements' not because it believes that their public meetings would create a clear and present danger to the community, but because it believes the privilege of free assembly in a school building *should be denied to those whose convictions and affiliations it does not tolerate.*" (Emphasis added.) (28 Cal. (2d) at p. 575.)

In the instant situation, it is clear there is no guarding against any danger as may be seen from the fact.

that veterans who have property in excess of \$5,000.00 are not taxed and, therefore, are not penalized in any way, in the event that they advocate these proscribed doctrines. All exemptees who refuse to sign the declaration required by the implementing legislation are still free to remain at large and operate although under an economic burden.

In the light of the above discussion, we submit free speech may not be infringed merely for the purpose of withholding a valuable benefit from those deemed "disloyal" where there is no reasonable relation to preventing any danger to the country or to some vital interest. Nor do the government employment cases in any way detract from this conclusion, since in no United States Supreme Court case has there been upheld a denial of government employment on the grounds that the state may withhold a privilege from "those whose convictions and affiliations it does not tolerate." In each case, it is clear that the denial of government employment was predicated on the right of the state to protect the integrity of the public service, or the right of the state to know certain information deemed relevant because of the particular employer-employee relationship. (See *Garner v. Board of Public Works*, 341 U.S. 746.)

Free speech may not be infringed unless it is necessary to prevent a substantial evil. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, held free speech may not be infringed even to promote patriotism. If the answer were otherwise, then the doors would be open to bar advocates of these or

other proscribed doctrines or those who refuse to say whether they advocate these doctrines from municipally owned busses, municipally owned libraries, state-financed school books, municipally owned water and power, or for that matter, even police protection. For the argument could be made by proponents of the constitutional amendment, why should we provide police protection for those who seek to destroy this country by their advocacy? On this basis, why should not the services of a policeman answering a call of distress be made dependent upon whether or not a citizen advocates proscribed doctrines? That this extension of the principle sounds ridiculous is only further proof of the ridiculousness of the principle itself.

- **D. Freedom of Speech Is Abridged by the Arbitrary Denial of Tax Exemption to Advocates of the Proscribed Doctrines, or to Those Who Refuse to State Whether or Not They So Advocate, Under the Doctrine of Unconstitutional Conditions.**

We have demonstrated above that freedom of speech is abridged where it strikes at advocacy unrelated to some grave danger to the state or to some equally overriding consideration. However, the court below states that:

"... (T)he limitation on speech is a conditional one, imposed only if a tax exemption is sought; ... and that not one of the fundamental guarantees but only a privilege or bounty of the state is withheld if the exemption claimant prefers to engage in the prohibited criminal advocacy ..."

(R. No. 382, p. 53.)

This argument has a ring of familiarity to it. In fact, this seems to have been the position of every



government agency in all of the cases involving test oaths which have been before the courts. However, this Court has refused to decide cases by means of such a facile generalization or to engage in a sophistical argument on the difference between a "right" and a "privilege". As Mr. Justice Frankfurter said in his concurring opinion in *Garner v. Board of Public Works*, 341 U.S. 716, 725: "To describe public employment as a privilege does not meet the problem."

In *Wieman v. Updegraff*, 394 U.S. 183, the Court said on page 191:

"... We are referred to our statement in *Adler* that persons seeking employment in the New York public schools have 'no right to work for the State in the school system on their own terms, *United Public Workers v. Mitchell*. They may work for the school system upon the reasonable terms laid down by the proper authorities of New York.' 342 U.S. at 492. To draw from this language the facile generalization that there is no constitutionally protected right to public employment is to obscure the issue ..."

This court, thus, has avoided becoming involved in a semantic discussion, but, instead, has decided cases in far broader terms, mindful of its role in balancing vital interests going to the very heart of our society.

In *American Communications Association v. Douds*, 339 U.S. 384, 94 L. Ed. 925, the Court noted the governmental agency argument:

"The Board (NLRB) has argued on the other hand that Section 9(h) (the non-Communist oath) presents no First Amendment problem because its

sole sanction is the withdrawal from non-complying unions of the 'privilege' of using its facilities." (p. 389.)

However, the court would not accept this contention and stated on page 393:

"By exerting pressures on unions to deny offices to Communists and others identified therein, Section 9(h) undoubtedly lessens the threat to interstate commerce, but *it has the further necessary effect of discouraging the exercises of political rights protected by the First Amendment.*" (Emphasis added.)

It is conceded that the state is empowered to tax all property in the state and, for that matter, most property other than United States property and other exceptions not here involved. The state, likewise, is empowered to grant exemptions. The state, having granted a tax exemption to all veterans, as a class, for their past honorable service in the armed forces, may not discriminate by taking it away arbitrarily from some of them where there is no reasonable basis for the classification. (*Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 349; see *Marsh v. Alabama*, 336 U.S. 501.)

"... Nor can it make the privilege ... dependent on conditions that would deprive any members of the public of their constitutional rights. A State is without power to impose an unconstitutional requirement as a condition for granting a privilege even though the privilege is the use of state property ... "

*Danskin v. San Diego Unified School District*,  
28 Cal. (2d) 536, 545.

The California Supreme Court went on in the *Danskin* case to knock out the loyalty oath for the use of school buildings in the following terms, on page 546:

"Since the state cannot compel 'subversive elements' directly to renounce their connections and affiliations, it cannot make such a renunciation a condition of receiving the privilege of free assembly in a school building. Such a condition is as unconstitutional as the condition that a foreign corporation pay a tax for the privilege of doing business that could not otherwise be constitutionally imposed on it (*Western Union Telegraph Co. v. Kansas*, 216 U.S. 1), or agree to abstain from resort to the federal courts (*Terral v. Burke Construction Company*, 257 U.S. 529), or the condition that a public carrier obtain a certificate of public convenience and necessity before using the public roads (*Frost v. Railroad Commission of California*, 271 U.S. 583)."

In the case of *Frost v. Railroad Commission of California*, 271 U.S. 583, the Court posed the question before it in these terms:

"The naked question which we have to determine, therefore, is whether the state may bring about the same result (converting private carriers into public carriers against their will) by imposing the unconstitutional requirement as a condition precedent to the enjoyment of a privilege, which without so deciding we shall assume to be within the power of the state altogether to withhold if it sees fit to do so?" (p. 592.)

The court answered its own question in words which are equally applicable to the legislation here involved:

"May it stand in the conditional form?"

"If so, constitutional guarantees so carefully guarded against direct assault, are open to destruction by the indirect but no less effective process of requiring a surrender, which though in form voluntary, in fact lacks none of the elements of compulsion. Having regard to the form alone, the act here is an offer to a private carrier of a privilege, which the state may grant or deny, upon a condition which the carrier is free to accept or reject.

"It would be a palpable incongruity to strike down an act of state legislation which by words of express divestment, seeks to strip the citizen of rights guaranteed by the Federal Constitution, but to uphold an act by which the same result is accomplished under a guise of a surrender of a right in exchange for a valuable privilege which the state threatens otherwise to withhold."

To a similar effect is *Hannegan v. Esquire, Inc.* (1946), 327 U.S. 146, 156, and the dissents of Mr. Justice Brandeis and Mr. Justice Holmes in *United States ex rel. Milwaukee Social Democrat Publishing Co. v. Burleson*, 225 U. S. 407, 421-423, 430-432, 437, 438.

An analogous rule should apply equally to this situation because, if, as the majority below contends, advocates of these doctrines are as free to speak without the benefit of the tax exemption, then in effect, these advocates are paying a tax to speak, a tax which is as deadly in its effect on free and open discussion as the denial of postal privileges at less than cost.

"The First Amendment prohibits all laws abridging freedom of press and religion, not merely

some laws or all except tax laws." (Dissenting opinion, *Jones v. Opelika*, 316 U.S. 584, 609; majority decision vacated and reversed, in 319 U.S. 103.) (Emphasis added.)

In all of the public housing oath cases, the governmental housing authorities had argued that there was merely a privilege involved which might be granted or withheld by the government on any basis it wished and that tenants might be evicted for refusing to sign a non-disloyalty declaration. The appellate courts uniformly held against this contention.<sup>12</sup> For example, in *Chicago Housing Authority v. Blackman*, (1954), 4 Ill. (2d) 319, 122 N.E. (2d) 522, 524, the Illinois Supreme Court, in an unanimous decision, forcefully rejected this argument and said:

*"The argument, in other words, is that because the tenants have no legal right to occupy the housing accommodations, they cannot be deprived of any constitutional right by the requirements in question. The position is untenable. A similar contention was rejected in Wieman v. Updegraff, 344 U.S. 183 . . . Even though appellants have no right to remain as tenants of appellee, they may not as a condition of continued occupancy be required to comply with unconstitutional conditions."* (Emphasis added.)

The constitutional amendment and the oath requirement seek to impose an unconstitutional condition in

<sup>12</sup>*Larson v. Housing Authority of Milwaukee*, 70 N.W. (2d) 605, 270 Wisc. 269, certiorari denied 350 U.S. 882; *Rudder v. United States*, 226 F. (2d) 51 (CA DC 1955); *Kutcher v. Housing Authority of City of Newark*, 119 A. (2d) 1, 20 N.J. 181; *Chicago Housing Authority v. Blackman*, 122 N.E. (2d) 522, 4 Ill. (2d) 319.

requiring applicants for tax exemption to renounce beliefs and speech constitutionally protected. Here the public welfare and safety remains at precisely the same level whether appellants or those who do advocate the forceful overthrow of the government or support of a foreign government have a tax exemption or not.

Concededly, tax exemptions are privileges granted by the state. Yet, the Fourteenth Amendment still clearly controls the legislative classification. This Court stated the following rule with regard to tax exemptions in the case of *American Sugar Refining Co. v. Louisiana*, 179 U.S. 89:

"The act in question does undoubtedly discriminate in favor of a certain class of refiners, but this discrimination, if founded upon a reasonable distinction in principle is valid.

"Of course, if such discrimination were purely arbitrary, oppressive or capricious and made to depend upon differences of color, race, nativity, religious opinions, political affiliations, *or other considerations having no possible connection with the duties of citizens as taxpayers*, such exemption would be pure favoritism, and a denial of equal protection of the laws to the less favored classes." (p. 92.) (Emphasis added.)

We must re-emphasize that we are not here concerned with the situation where the proscribed advocacy by guarantees of tax exemptions presents any clear and present danger.



**E. The Enactments Here at Issue Present a Substantial Infringement on Freedom of Speech and Assembly in Affecting the Rights and Liberties of All California Residents and Organizations.**

The constitutional provision is mandatory in its terms. It denies any tax exemption to any person or organization which advocates the proscribed doctrines. The mere fact that a declaration of non-advocacy has not as yet been required from all persons or organizations receiving any exemption should not obscure the fact that all residents of the State of California are within the purview of the constitutional amendment.

It seems fairly clear that all residents of California, young or old, are the recipients of some type of tax exemption.

All individuals have either a personal income tax exemption of \$2,000., if single, or \$3,500., if married, plus exemptions of \$400. for each dependent.<sup>13</sup> It is true that taxpayers do not have to file returns unless their gross income exceeds these exempted amounts.<sup>14</sup> However, that does not obviate the fact that all persons with any income at all come under the provisions of the constitutional provision since they do receive some exemption, whether or not they are required to file a return. Even at that the Statistical Abstract of the United States shows (p. 371) that in 1956, 4,598,000 income tax returns were filed by Californians.

<sup>13</sup>California Revenue and Taxation Code, Section 17181.

<sup>14</sup>Revenue and Taxation Code, Section 18401.

In addition, California had 4,290,000 households in 1955.<sup>15</sup> The California Constitution (Article XIII, Section 10½) provides for a \$100. property tax exemption for every householder in the State. The Abstract further shows (p. 628) that in 1954 there were 123,000 farms in this state: (Article XIII, Section 1 of the California Constitution exempts from taxation all growing crops in the state.)

The annual report of the California State Board of Equalization for 1955-1956, pp. 58-59, lists as the number of veterans who filed claims for exemption in the state in 1956 as 1,028,995. This, of course, does not include the number of veterans who failed to file claims for exemption either because they were opposed to the provisions here at issue or for some other reason. The report also indicates that there were 11,113 church exemptions during the same year. In addition, there are inheritance tax exemptions and gift tax exemptions, as well as sales and use tax exemptions in California. For many of them, returns do not have to be filed until a certain gross amount is reached. However, that does not negate the fact that all exemptions of whatever kind come under the provisions of Article XX, since the majority below has held that Article XX is self-executing in and of itself.

Therefore, these enactments affect the free speech of almost all individuals in California, even though there has not been a showing of clear and present dan-

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<sup>15</sup>California—*Selected Economic Growth Projections to 1975*—Prepared by Stanford Research Institute for California State Chamber of Commerce, February 15, 1958.

ger from tax exemptees as a group. In the case of *American Communications Association v. Douds*, 339 U.S. 382, this Court clearly indicated that merely because an expurgatory oath can be demanded in one particular situation, as in that case from just a few individuals, was no reason to assume that it could be demanded from the populace as a whole. For the court said:

"Section 9(h) touches only a relative handful of persons leaving the great majority of persons of the identified affiliations and beliefs completely free from restraints . . ."

If Article XX is upheld here, it will mean that the State of California has the right to exact from every citizen in this state an affidavit similar to the one required by Section 32, before any individual can claim any exemption at all. Certainly, it cannot be said that such an adventure into mass testing by oath is an insubstantial infringement on the rights of the people.<sup>16</sup>

**F. These Provisions Abridge Freedom of Speech and Assembly by Imposing a Prior Restraint in That the Language of These Acts Is Vague and Uncertain in Its Terms.**

This Court has not yet determined whether the peacetime advocacy of the support of a foreign government in the event of hostilities is within or without the scope of the free speech clause of the First Amendment, or whether it violates the "vice of

<sup>16</sup>Cf.: Majority below states in R. No. 382, p. 53: ". . . It is obvious, therefore, that by no standard can the infringement upon freedom of speech imposed by section 19 of article XX be deemed a substantial one . . ."

vagueness" rule. The majority opinion of the court below barely touched on this clause. The major reason for this readily suggests itself—there are simply no cases interpreting the phrase "advocacy of the support of a foreign government against the United States in the event of hostilities." Thus, there is a clean slate.

It is clear that this clause covers peacetime advocacy, i.e., advocacy occurring right now. The penalty of deprivation of tax exemption is placed on advocates or those who refuse to say whether they advocate what position should be taken in the event of hostilities—an eventuality which might never occur. Therefore, this advocacy cannot possibly be considered an incitement of any kind. (*Yates v. United States*, 354 U.S. 298.)

It is true that Section 3 of the Espionage Act of 1917 (Act of June 15, 1917, c. 30, 40 Stat. 217, as amended by Act of May 16, 1918, c. 75, Sec. 1, 40 Stat. 553) imposes penal sanctions on "Whoever shall by word or act support or favor the cause of any country with which the United States is at war, or by word or act oppose the cause of the United States therein . . ."

However, there certainly is a big distinction between such a wartime measure and a peacetime measure of the kind which is involved herein.

The phrase here in question also has some similarity to the language in the Sedition Act (1 Stat. 596) of 1798, another peacetime measure which made it a crime to, "Aid, encourage or abet any hostile de-

signs of any foreign nation against the United States, their people or government.”

However, the repeal of the Sedition Act prevented any consideration by this Court as to its validity.

In order to avoid duplicate briefing, we will herein adopt the further discussion of this point set forth in the Petitioners' Consolidated Opening Brief in the companion cases of *First Unitarian Church v. County of Los Angeles* (O.T. 1957, No. 382) and *Valley Unitarian-Universalist Church, Inc. v. County of Los Angeles* (O.T. 1957, No. 385).

## II.

**THESE PROVISIONS VIOLATE DUE PROCESS IN THAT THE MEANS CHOSEN BEAR NO REASONABLE RELATION TO THE ENDS SOUGHT TO BE ACHIEVED.**

**A. Denying a Tax Exemption Does Not Reasonably Protect the State or Nation Against Violent Overthrow or Conquest, nor Harm to Its Revenue Raising Program.**

It is fully recognized that First Amendment rights, as indeed, all other constitutional rights, must in some instances (the exception rather than the rule) yield to the right of the state or the federal government to protect some very substantial interest of the community. But it is equally true that a law may not infringe on such rights as freedom of speech, unless the law is vitally necessary and the infringement is directly related to preventing the evil sought to be met by the statute.

“... (A)ny attempt to restrict those liberties must be justified by clear public interest, threatened,

not doubtfully or remotely, by clear and present danger. *The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice.* These rights rest on a firmer foundation." (Emphasis added.) (*Thomas v. Collins*, 323 U.S. 516, 530.)

Here, the majority below has stated the primary purpose of the provisions at bar as follows:

"... It may properly be said that the primary purpose of the people of the state in the enactment of section 19 of article XX was to provide for the protection of the revenues to the state from impairment by those who would seek to destroy it by unlawful means . . ." (R. No. 382, p. 41.)

From this statement of the purpose, it would appear that the majority below are not talking about protecting the state and nation from violent revolution or subjugation of the nation by a foreign power, although we must confess we are not completely sure, for the majority below at a later point seemed to hold that the legislation here involved had the same objective as the Smith Act, which was held valid in *Dennis v. United States*, 341 U.S. 494.

If that is the case, then of course we are concerned with the propriety of the means chosen to protect the country and the fundamental rule of due process as to whether the means chosen is reasonably related to the end sought. If the majority are not talking about forcible revolution or armed combat, then how



can it rationally be said that there is danger to the revenues of the state from tax exemptees? They are not in the position of collecting taxes. They have no access to funds. They are not in the State or County Treasurers' offices. They don't have their hands in the till. If the purpose is to protect the tax revenues of the state, then what of the advocates of these doctrines who file no loyalty oath, but still automatically receive an income tax exemption and a householder's exemption?

If, however, the purpose is to prevent overthrow of the state itself, then why is the advocate of these doctrines who pays the tax left otherwise untouched? Just what is accomplished by denying advocates of the proscribed doctrine their tax exemption? Are they any less dangerous? If the danger is that by reason of the tax exemption they have more money in their pocket to accomplish their evil ends, then reasonably, they should not be allowed to work or earn wages. If there is a danger from such advocacy, the advocate should be jailed, and not merely required to pay higher taxes.

It should seem fairly clear that neither of the provisions involved here are designed to really protect the country against any danger to either the government structure itself or to the tax revenues of the state, by reason of violent overthrow or hostile enemy action.

**B. The Provisions Here in Issue Have No Reasonable Relationship to the Different Purposes for the Various Tax Exemptions.**

In determining whether due process has been violated here and whether the provisions at issue have any relationship to a proper legislative end, there are two purposes to be considered: One, the purpose of the tax exemptions themselves; and two, the purpose of the provisions here at issue.

**1. Each tax exemption was created for a different reason.**

The State Supreme Court in the majority opinion in the court below states:

“... There are additional interests with which the state is concerned and which it is attempting to promote by granting exemptions from taxation. Included is the interest of the state in maintaining the loyalty of its people and thus safeguarding against its violent overthrow by internal or external forces. This legitimate objective is sought to be accomplished by placing in a favored economic position, and thus, to promote their well being and sphere of influence, those particular persons and groups of individuals who are capable of formulating policies relating to good morals and respect for the law.”  
(R. No. 382, pp. 51-52.)

The court goes on to say that the reason for the church exemption is “to inculcate principles of sound morality, leading citizens to a more ready obedience to the laws . . . The same may be said of others enjoying tax exemptions, notably veterans, . . . colleges . . . and charitable organizations . . . which, together

with church groups, occupy positions whereby they may exert a salutary influence on the moral well-being of the community . . ." (R. No. 382, p. 52.)

The majority below seems to have selected the exemptions it cites with care, in order to fit into a pattern having some relationship to the alleged purpose of the provisions at issue here. Actually, each of the various exemptions granted by the state (and there are a great number of them) were granted to accomplish wholly different and varied purposes.

The veterans' exemption, as stated in the majority opinion in the *Prince* case at bar was granted, in part, "in consideration for services in the public interest and welfare, and as encouragement to others to follow their examples." (R. 66.) It might also be said that the veterans' exemption was also designed to give an economic boost to veterans of limited means, because of the feeling that their wartime service placed them at an economic disadvantage. This may be seen from the fact that the veterans' exemption is limited to those who own less than \$5,000 worth of property. It is highly doubtful that it has the additional purpose of fostering patriotism, since it is not restricted to *citizens*, but is granted to all *residents* of the State of California.<sup>17</sup>

On the other hand, exemptions granted to growing crops,<sup>18</sup> fruit and nut-bearing trees<sup>19</sup> are for the purpose of promoting agriculture in the state and to

<sup>17</sup>California Constitution, Article XIII, Section 11 $\frac{1}{4}$ .

<sup>18</sup>California Constitution, Article XII, Section 1.

<sup>19</sup>California Constitution, Article XII, Section 12 $\frac{3}{4}$ .

prevent a heavy economic burden falling on farmers while their return for their investment in time, money and effort is only problematical.

The exemption for cemeteries was granted for a purely practical reason. The state had no means of enforcing tax liens and judgments against cemeteries, because there were no buyers for real property which contained dead bodies. Therefore, the practical solution was simply to exempt cemeteries from taxes.<sup>20</sup>

The personal income tax exemptions of \$2,000.00 to single individuals and \$3,500.00 to married couples were granted because of our reliance on the theory of a graduated and progressive income tax structure which holds that a certain minimal income is utilized to pay for the necessities of life and should be exempted from taxation; and secondly, that those who can best afford to pay taxes should bear the greater costs of the tax burden above and beyond these minimal amounts.<sup>21</sup>

The householders' exemption was granted because it was too much trouble to collect taxes for such a minor amount as \$100.00 of personal property.<sup>22</sup>

In addition, there are the following tax exemptions which are granted for somewhat similar reasons as those for the personal income tax exemptions:

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<sup>20</sup>See 24 So. Cal. L. Rev. 252, 278.

<sup>21</sup>Revenue and Taxation Code, Section 17181.

<sup>22</sup>California Constitution, Article XIII, Section 10½.

## Inheritance Tax Exemptions

## Revenue & Taxation Code Section

1. Specific exemptions (\$50 to \$24,000, depending on relationship of transferee to decedent) .....13801 et seq.
2. Marital exemption .....13805
3. Previously taxed property exemption .....13821
4. Charitable exemption .....13841
5. Intangibles exemption .....13851
6. Insurance exemption .....13721 et seq.

## Gift Tax Exemptions

## Revenue & Taxation Code Section

1. Annual exemption \$4,000 per donee) .....15401
2. Specific exemption  
(Same as for inheritance tax) .....15421 et seq.
3. Charitable exemption .....15441 et seq.
4. Intangibles exemption .....15451

Sales Tax Exemption .....6351 et seq.

In contrast to the varied and wholly different purposes for these tax exemptions, where is that single, unified purpose of Article XX, encompassing all of these exemptions?

The fatal fallacy in the reasoning of the majority below is in forgetting its own admonition that Article XX applies to *all* exemptions, and in assuming that it relates only to the particular exemption involving the parties before the court, i.e., either the church or the veterans' exemption. We must again point out that Article XX covers all exemptions which would include such diverse ones as we have set forth above, such as growing crops, fruit and nut-bearing trees, cemeteries, personal income tax,

household and even inheritance tax exemptions. None of these other exemptions have any such purpose as that suggested for churches and veterans, and since Article XX is self-executing and applies to all exemptions, the contention of the majority below would seem to be a make-weight one.

Where, then, is the necessary relationship between the constitutional provision and the purposes of all the different tax exemptions? It simply does not exist.

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### III.

#### **DUE PROCESS IS VIOLATED BY DENYING TAX EXEMPTIONS FOR A MERE REFUSAL TO SIGN THE DECLARATION WITHOUT ANY EVIDENCE OR SHOWING OF ADVOCACY OF THE PROSCRIBED DOCTRINES.**

As we have demonstrated, *supra*, the purpose of Article XX, Section 19, is purely and simply that of penalization. However, that does not end our problem. Even assuming *arguendo* that the classification of Article XX, Section 19, is a valid one, in dividing taxpayers into two groups—advocates and nonadvocates of the proscribed doctrines, still we are left with the very vital question of determining which individuals or organizations fall into the penalized class. May the state rely on an *expurgatory oath* as provided by the implementing legislation as a means of making such a determination? We submit the answer to this question *must* be in the negative because of its subversion of the presumption of innocence.



As we have pointed out, the constitutional amendment covers all residents of the state, for everyone has a personal income tax exemption or householders' exemption. Could the state make it a requirement for receiving these or any exemptions that each resident of the state sign an affidavit that he is not guilty of any crime? After all, using the reasoning of the taxing authorities, giving exemptions to criminals negates the purposes of the exemptions, or even using the real reason for Article XX, Section 19, why should we give special benefits to people who break our laws? —“Let's hit them in the pocketbook.” To paraphrase the words of the argument to the voters, “No right-thinking person should object to making a declaration that he is not a (criminal) before receiving such exemptions from the state.” But even assuming the validity of such reasoning *arguendo*, may we validly determine who are criminals among our entire citizenry by means of an expurgatory oath? For if we can determine who are criminals by means of an expurgatory oath in order to deny tax exemptions, there is no reason why it cannot be used as a basis for determining who should be imprisoned. What is essentially wrong with such a scheme, so simple and forthright?

The fatal and dangerous error in such a scheme is that it violates the presumption of innocence and rules of evidence which are the foundation of our Anglo-Saxon tradition of law. This would be the very act of inversion of the judicial process that was held to be violative of the Constitution in *Cum-*

*mings v. Missouri*, 4 Wall. (U.S.) 277, 18 L. Ed. 356.  
There the court said:

"The clauses in question subvert the presumptions of innocence, and alter the rules of evidence, which heretofore, under the universally recognized principles of the common law, have been supposed to be fundamental and unchangeable. They assume the parties are guilty; they call upon the parties to establish their innocence, and they declare that such innocence can be shown only in one way—by an inquisition, in the form of an expurgatory oath, into the conscience of the parties." (18 L. Ed. at p. 364.)

There are certain instances, it is true, where the Government has the right to exact information as to the state of mind or loyalty of individuals and may even use an expurgatory oath. However, as *American Communications Association v. Douds*, 339 U.S. 382, *supra*, pointed out, these situations are limited both as to circumstances and as to the number encompassed. In *Douds*, the method was permissible because of the great danger to interstate commerce posed by advocates of these doctrines holding positions of great power in labor unions. Another situation in which this method of determination has been upheld has been in the field of government employment, as indicated by *Garner v. Board of Public Works*, 341 U.S. 716, *supra*. This is not because any inference is drawn but because the governmental body has the right to certain information.

In such situations there is no inference drawn nor is the presumption of innocence inverted, but the

individual fails to qualify for public office for failing to give relevant information to his employing agency and because of the peculiar relationship between a public employee and the Government which requires that loyalty be an implied condition of the hiring contract. Similar considerations explain why attorneys, as members of the bar, may be required to take expurgatory oaths or give information. (*In re Summers*, 325 U.S. 561; *In re Anastoplo*, 3 Ill. (2d) 471, 121 N.E. (2d) 826; cf. *Koenigsberg v. State Bar*, 353 U.S. 252; *Sheiner v. State* (Fla.), 82 So. (2d) 607; *In re Ellis*, 282 N.Y. 435, 26 N.E. (2d) 967; *In re Grae*, 282 N.Y. (2d) 428, 26 N.E. (2d) 963.

Here, however, we have a situation involving the public at large with no substantial interest of the state sufficiently great or sufficiently endangered to justify the abandonment of the presumption of innocence which is and should be the general rule.

In the *Douds* case, the United States Supreme Court clearly indicated that, merely because an expurgatory oath can be demanded in that particular situation from just a few individuals, was no reason to assume that it could be demanded from the populace as a whole.

There is a further reason why the presumption of innocence should not be subverted here. In every government employee case, such as *Garner v. Board of Public Works*, supra, and *American Communications Association v. Douds*, 339 U.S. 382, supra, in the field of interstate commerce, there were legislative findings that some individuals in the positions of concern engaged in the proscribed advocacy.

With the record barren as it is of any contention that the respondent here, or any of the taxpayers in the companion suits now pending advocate these proscribed doctrines, Section 32 of the Revenue and Taxation Code must fall, since refusal to state that a person or group does not advocate the proscribed doctrines is not proof that they do so advocate.

#### IV.

**THE ENACTMENTS VIOLATE THE EQUAL PROTECTION CLAUSE TO THE FOURTEENTH AMENDMENT IN ARBITRARILY AND DISCRIMINATORILY DENYING TAX EXEMPTIONS TO SOME APPLICANTS WHILE GRANTING THEM TO ALL OTHERS IN SIMILAR CIRCUMSTANCES.**

**A. Section 32 Is Invalid in Excluding Householders From Its Provisions in Violation of Article XX.**

The Constitutional Amendment, Article XX, Section 19, specifically states: "No person or organization . . . shall receive *any* exemption from *any* tax imposed by this state, or *any* county (or other political subdivision)."

Yet Section 32 of the Revenue and Taxation Code which was supposedly passed pursuant to the constitutional amendment provides that:

"Any statement, return, or other document in which is claimed any exemption, *other than the householder's exemption* from any property tax . . . shall contain a declaration . . ."

There is no authority for the legislature to make any such exception. They are bound by the terms of the constitutional amendment, whose manifest purpose was to deny *any* tax exemption to all advocates of certain proscribed doctrines.

A rather interesting effect of this legislative tampering is that although veterans who failed or refused to file the nondisloyalty declaration were denied the veteran's exemption, they would still receive the householder's exemption of \$100.00.<sup>23</sup> and the personal income tax exemption of \$2,000 if single, or \$3,500 if married.<sup>24</sup>

The majority below, however, states that the legislature was acting perfectly proper in excluding householders from filing the declaration, because, "it could also take into account the fact that the segment of householders in this state is so overwhelmingly large compared with others chosen for exemption that the cost of processing them would justify their separate classification." (R. No. 382, p. 45.) However, Justice Carter, in his dissenting opinion, knocks this argument on the head (R. No. 382, p. 81):

"If this class is so 'overwhelmingly large,' it would appear that the old adage, 'in numbers lies strength' is true, that this class should also be required to take the oath prior to claiming exemption. It would also appear that mere difficulty in 'processing' would be of little moment in an undertaking thought to be so vitally necessary. Furthermore, if the principle behind the oath is, as we are told, to prevent those dangerous persons from depleting the state's revenue, it would appear that this 'overwhelmingly large' class might, even though the exemption is a relatively small one, deplete it even more than the revenues from those which fall within legislation."

<sup>23</sup>California Constitution, Article XIII, Section 10½.

<sup>24</sup>Revenue and Taxation Code, Section 18401 et seq.

The exclusion of the householder's exemption was undoubtedly made by the legislature because it was felt that requiring all householders to file a loyalty oath would be an unbearable financial burden on the state. Unfortunately, the legislators are caught in a web of their own fashioning. It was they who drafted and initiated the constitutional amendment stating that *no exemption* be given to individuals or organizations who advocate these proscribed doctrines. The people of the state adopted the constitutional amendment. If it is constitutional, then certainly the legislature at this late date does not have the power to amend the constitutional amendment by a mere legislative act and exclude householders.

**B. The Implementing Legislation Is Invalid as Discriminatory Legislation in Not Requiring Loyalty Oaths From All Individuals and Organizations Who Receive Tax Exemption.**

The Legislature adopted implementing legislation pursuant to the mandatory provision of the Constitutional Amendment's directive. This, however, covered only property tax exemptions (Revenue and Taxation Code Section 32<sup>25</sup>) and corporation income tax exemptions (Revenue and Taxation Code Section 23705<sup>26</sup>). Not covered were many other tax exemptions provided in the laws of California, including personal income tax exemptions (Revenue and Taxation Code Section 18401), gift tax exemptions (Revenue and Taxation Code Sections 15401-15451), inheritance tax exemptions (Revenue and Taxation Code Sections 13801-13873), exemptions for free pub-

<sup>25</sup>Calif. Stats. 1953 c. 1503, p. 3114, Sec. 1.

<sup>26</sup>Calif. Stats. 1953, c. 1503, p. 3115, Sec. 2.



lic libraries, free museums, growing crops, and property used exclusively for public schools (California Constitution, Article XIII, Section 1), and sales tax exemptions (Revenue and Taxation Code Sections 6351-6403).

The majority below in holding that the Legislature could utilize different means for different classes of tax exemptees confuses the issue. The majority below stated:

"If the exclusion of householders from the requirement of Section 32 renders that section void as discriminatory or lacking in uniformity, it would seem to follow that the entire Revenue and Taxation Code with reference to procedures to qualify for exemptions would be void for the same reason. But, obviously, no such claim is made."

This is true. We concede the fact that the Legislature may require applicants for only certain types of exemptions to file claims prior to getting their exemptions, as was held in *Chesney v. Byram*, 15 Cal. (2) 460, 465. However, the difference in procedures is because there are differences in exemptions. Some exemptions may only require filing an initial application. Other exemptions may require filing yearly affidavits or returns. Other exemptions may be granted as the householder's without filing anything. But that is simply because there are differences in exemptions.

However, this does not apply to an overall category, such as is set forth in Article XX, which provides that no person or organization which advocates the

proscribed doctrine shall receive any tax exemption. It would appear that there should be only one method for making a determination of that overall qualification.

If some claimants for some tax exemptions have to file a nondisloyalty declaration, it would seem, logically, that all claimants for tax exemptions should have to file the same. Even if we were to concede that a distinction may be drawn between those who presently file yearly claims for exemption and those who do not, it would appear that all claimants for yearly exemptions should have to file the same sort of nondisloyalty declaration as required by Revenue and Taxation Code Sections 32 and 23705.

**C. The Constitutional Amendment, in Denying Any Exemption to Aliens, Violates the Equal Protection Clause.**

As far as can be determined, no tax exemption of the State of California prior to the passage of the enactments in issue was restricted to citizens.

Discrimination against aliens as such is forbidden by the due process and equal protection clauses of the Fourteenth Amendment for they both state that *no person*, not just citizens, shall be deprived of equal protection of the law or life, liberty or property without due process of law. (*Truax v. Raich*, 239 U.S. p. 33.)

The second part of the oath prohibits granting *any exemption* to persons who advocate the support of a foreign government against the United States in the event of hostilities. This would have the effect of depriving every alien who has not applied for United

States citizenship of any tax exemption for no other reasons than his alienage.

It is logical and understandable to assume that any alien in this country who does not move to become a United States citizen retains his allegiance to his native land and in the event of hostilities between the United States and that country, would be bound to support his native land.

We are not just discussing the case of individuals supporting Russia in the event of hostilities, which in the context of today's world affairs, most rapidly rises to mind. We are talking about English citizens (after all, we did fight two wars against England), French citizens, even Mexican and Canadian citizens from our very friendly border countries.

The effect of this amendment is to deny the personal income, inheritance, sales or any other tax exemptions to aliens, even including diplomatic representatives in this country.

Denying aliens rights accorded others, simply because they are aliens, violates the equal protection clause of the Fourteenth Amendment. (See *Truax v. Raich*, 239 U.S. 23, supra, and *Takahashi v. Fish and Game Commission*, 334 U.S. 410.)

While the states may make reasonable classifications for purposes of taxation and the granting of exemptions, an unreasonable or arbitrary classification in this area is invalid under the equal protection and due process clauses of the Fourteenth Amendment.

"The equal protection clause, like the due process of law clause, is not susceptible of exact delimita-

tion . . . It does not, however, forbid classification; and the power of the state to classify for purposes of taxation is of wide range and flexibility, provided always, that the classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike'."<sup>27</sup>

*Louisville Gas and Electric Company v. Coleman*, 277 U.S. 32, 37.

## V.

**THE PROVISIONS HEREIN IN ISSUE VIOLATE THE SUPREMACY CLAUSE OF THE CONSTITUTION IN ATTEMPTING TO REGULATE AND RESTRICT SEDITION, A FIELD ENTIRELY WITHIN THE PROVINCE OF THE FEDERAL GOVERNMENT, AND WHICH THE CONGRESS OF THE UNITED STATES, BY LEGISLATIVE ENACTMENTS, HAS PREEMPTED AND WHOLLY OCCUPIED.**

In this area of relations with foreign governments, the national government clearly has supreme control. Even without the principle of preemption, it would seem that any restriction on what individuals can say concerning a foreign government and its relation to the United States should fall within a federally controlled area. But we need not rely on this alone. This legislation and constitutional amendment are in conflict with congressional action and national policy. Congress has passed several laws covering our relations with foreign governments. Title 22, U.S.C.A., entitled "Foreign Relations and Intercourse", con-

<sup>27</sup>*Air-Way Electrical Appliance Corporation v. Day* (1924), 266 U.S. 71, 85; *F. S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415.

tains a special chapter, "Foreign Agents and Propaganda" (Chapter 11), which is under the direct control of the Department of Justice. In Title 18, U.S. C.A., Sections 2381-2390, another chapter, No. 115, deals with treason, sedition and subversive activities, and covers the only types of peacetime advocacy which are proscribed and which are in any manner penalized, that of advocating the overthrow of the government of the United States or any state by force and violence. (18 U.S.C.A. 2385.) It is to be noted there is no proscription of advocacy during peacetime of the support of a foreign government in the event of hostilities. This would not appear to be accidental. Thus, the federal government does make such advocacy a crime, even though there is a comprehensive sedition law on the books.

The case of *Pennsylvania v. Nelson*, 350 U.S. 497, held that Congress had intended to occupy the field of seditious utterances to the exclusion of any parallel state legislation. Our nation has grown great by allowing unrestricted discussions and advocacies in this area. There may be reasons during wartime to place limitations on speech when the nation marshals all of its power for the immediate task at hand. There are dangers in so doing; but whatever the rationale is for limiting speech during wartime, those circumstances do not exist which warrant making such a limitation during peacetime. Congress, we submit, was well aware of this, and, therefore, avoided penalizing in any way the advocacy which is being penalized in the second clause of the measures involved herein. Thus, this constitutional amendment and implement-

ing legislation are in direct conflict with federal legislation and national policy which cannot be lightly brushed aside.

It is to be noted that there is not even a mention in this clause of the State of California. Contrast this with the sedition law in the *Nelson* case, supra. There it may be recalled, Pennsylvania made it a crime to advocate the overthrow of the United States government *or the State of Pennsylvania*; but still that was not sufficient to save that legislation from invalidity because of federal preemption. As the court said on page 420:

“Congress having thus treated seditious conduct as a matter of vital national concern, it is in no sense a local enforcement problem. As was said in the court below: ‘Sedition against the United States is not a *local offense*. It is a crime against the *Nation*.’ ”

Where Congress has so clearly spoken that it is occupying the field of sedition and seditious utterances, it can mean nothing else than a warning to the states to keep hands off this very vital and sensitive area which should not be handled in any patchwork fashion.

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#### CONCLUSION.

For all of the above-stated arguments, this Court is hereby requested to declare null and void the Constitutional Amendment, Section 19 of Article XX of the Constitution of the State of California as well as Revenue and Taxation Code Section 32 and reverse the decisions of the Court below.



There has been a veritable blizzard of loyalty oaths in recent times. And instead of making the country more secure, each new one seems to increase our insecurity. This Court has a rare opportunity—an opportunity to apply the standard of sanity and reason in a field that, probably more than any other in our law today, cries for the reapplication of such a standard.

The problem of test oaths is not a new one in this country. In the eruption of the American Revolution, there, too, we saw arise the same feelings of insecurity that have arisen in the post World War II years. Throughout the colonies there was a general scrutiny of loyalty. Formal test oaths were passed in substantial numbers.

“Failure to sign was followed by political, legal and civil disabilities; by disarming and imprisonment; by special taxation—one of the oddest cures for disloyalty ever tried.”

C. H. Van Tyne, *Loyalists in the American Revolution*.

When the perils of the war passed, cooler heads prevailed. It is to be earnestly hoped that we will not repeat the mistakes of earlier times. The problem of test oaths has recurred throughout our entire history, yet logic and the realization of their unreliability has ultimately prevailed. It was stated succinctly and well by Justices Douglas and Black in their concurring opinion in the case of *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 on page 644:

“... the test oath has always been abhorrent in the United States. Words uttered under coercion are proof of loyalty to nothing but self interest.”

This is an opportunity to reaffirm the calm judicial principle set forth by a unanimous Supreme Court speaking through Chief Justice Hughes in *DeJonge v. Oregon*, 299 U.S. 353, 365:

"The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press, and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

Dated, San Francisco, California,  
February 21, 1958.

Respectfully submitted,

LAWRENCE SPEISER,

*In Propria Persona*,

FRANKLIN H. WILLIAMS,

*Attorneys for Appellants.*

ALBERT M. BENDICH,

Staff Counsel, American Civil Liberties Union  
of Northern California,

*Of Counsel.*

(Appendix Follows.)

## Appendix

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### *California Veterans' Property Tax Exemption: California Constitution, Article XIII, Sec. 11¼:*

The property to the amount of \$1,000 of every resident of this State who has served in the Army, Navy, Marine Corps, Coast Guard or Revenue Marine (Revenue Cutter) Service of the United States (1) in time of war, or (2) in time of peace, in a campaign or expedition for service in which a medal has been issued by the Congress of the United States, and in either case has received an honorable discharge therefrom, or who after such service of the United States under such conditions has continued in such service, or who in time of war is in such service, or who has been released from active duty because of disability resulting from such service in time of peace or under other honorable conditions, or lacking such amount of property in his own name, so much of the property of the wife of any such person as shall be necessary to equal said amount; and the property to the amount of \$1,000 of the widow resident in this State, or if there be no such widow, of the widowed mother resident in this State, of every person who has so served and has died either during his term of service or after receiving an honorable discharge from said service, or who has been released from active duty because of disability resulting from such service in time of peace or under other honorable conditions, and the property to the amount of \$1,000 of pensioned widows, fathers, and mothers, resident in this State, of soldiers, sailors

and marines who served in the Army, Navy, Marine Corps, Coast Guard or Revenue Marine (Revenue Cutter) Service of the United States shall be exempt from taxation; provided, this exemption shall not apply to any person named herein owning property of the value of \$5,000 or more, or where the wife of such soldier or sailor owns property of the value of \$5,000 or more. No exemption shall be made under the provisions of this section of the property of a person who is not a legal resident of the State; provided, however, all real property owned by the Ladies of the Grand Army of the Republic and all property owned by the California Soldiers Widows Home Association shall be exempt from taxation.

*California Constitution, Article XX, Section 19:*

Notwithstanding any other provision of this Constitution, no person or organization which advocates the overthrow of the Government of the United States or the State by force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall:

(a) Hold any office or employment under this State, including but not limited to the University of California, or with any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State; or

(b) Receive any exemption from any tax imposed by this State or any county, city or county,

city, district, political subdivision, authority, board, bureau, commission or other public agency of this State.

The Legislature shall enact such laws as may be necessary to enforce the provisions of this section.

*California Revenue and Taxation Code, Section 32:*

**Property Tax Exemption claims; loyalty statements.**  
(Calif. Stats. 1953, c. 1503, p. 3114, Sec. 1).

Any statement, return, or other document in which is claimed any exemption, other than the householder's exemption, from any property tax imposed by this State or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State shall contain a declaration that the person or organization making the statement, return, or other document does not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means nor advocate the support of a foreign government against the United States in event of hostilities. If any such statement, return, or other document does not contain such a declaration, the person or organization making such statement, return, or other document shall not receive any exemption from the tax to which the statement, return, or other document pertains.

Any person or organization who makes such declaration knowing it to be false is guilty of a felony. This section shall be construed so as to effectuate the

purpose of Section 19 of Article XX of the Constitution.

*Revenue and Taration Code, Section 23705:*

**Sec. 23705.** Loyalty declaration for Tax Exempt Corporations. (Calif. Stats. 1953, c. 1503, p. 3115, Sec. 2.)

Any statement, return, or other document in which is claimed any exemption allowed by this article shall contain a declaration that the organization making the statement, return, or other document does not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means nor advocate the support of a foreign government against the United States in event of hostilities. If any such statement, return, or other document does not contain such declaration, the organization making such statement, return, or other document shall not receive any exemption allowed by this article. Any organization which makes such declaration knowing it to be false is guilty of a felony. This Section shall be construed so as to effectuate the purpose of Section 19 of Article XX of the Constitution.

If not otherwise required to do so, any organization claiming to be exempt under this article shall annually, on or before March 15th, file a statement, return, or other document establishing its right to the exemption and containing the declaration set forth in the last paragraph.



v

*United States Constitution:*

*Amendment 1.*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

*Amendment 14 (Adopted July 28, 1868). Section 1.*

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

*Article VI.*

(Cl. 2) This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

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JOHN T. FEY, Clerk

# In the Supreme Court

OF THE

**United States**

OCTOBER TERM, 1957

**Nos.**

LAWRENCE SPEISER,

*Appellant,*

vs.

JUSTIN A. RANDALL, as Assessor of Contra  
Costa County, State of California,

*Appellee.*

No. **483**

DANIEL PRINCE,

*Appellant,*

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation,

*Appellee.*

No. **484**

**Appeal from the Supreme Court of the State of California.**

## **MOTION TO DISMISS.**

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# In the Supreme Court

OF THE

United States

OCTOBER TERM, 1957

Nos.

LAWRENCE SPEISER,

*Appellant,*

VS.

JUSTIN A. RANDALL, as Assessor of Contra  
Costa County, State of California,

*Appellee.*

No.

DANIEL PRINCE,

*Appellant,*

VS.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation,

*Appellee.*

No:

Appeal from the Supreme Court of the State of California.

MOTION TO DISMISS.

Appellees City and County of San Francisco and Justin A. Randall move, pursuant to Rule 16(1), that the appeals from the final judgments of the Supreme Court of the State of California be dismissed for want

of jurisdiction on the ground that the appeals do not present a substantial federal question.



#### OPINIONS BELOW.

The Superior Court of the County of Contra Costa in the case of *Speiser v. Randall* issued an unreported opinion, which is set forth as Appendix A of the Jurisdictional Statement. The opinion of the Supreme Court of the State of California in said case appears as Appendix C of the Jurisdictional Statement and is officially reported in 48 Advance California Reports 476 and unofficially reported in 311 P. 2d 546.

The Superior Court of the City and County of San Francisco in the case of *Prince v. City and County of San Francisco* issued an unreported opinion, which is set forth as Appendix B of the Jurisdictional Statement. The opinion of the Supreme Court of the State of California in said case appears as Appendix D of the Jurisdictional Statement and is officially reported in 48 Advance California Reports 472 and unofficially reported in 311 P. 2d 544.

The opinions of the California Supreme Court in the causes at bar incorporate the reasoning and the conclusions of that Court in a companion case, *First Unitarian Church of Los Angeles v. County of Los Angeles*, which appears as Appendix E of the Jurisdictional Statement and which is officially reported in 48 Advance California Reports 417 and unofficially reported in 311 P. 2d 508.

### **JURISDICTION.**

The judgments of the Supreme Court of the State of California in these causes were filed on April 24, 1957. Notices of Appeal were filed with the Supreme Court of the State of California on May 27, 1957. Appellants seek to invoke the jurisdiction of this Court under Title 28, U.S.C., Section 1257(2).

Since, pursuant to Rule 15(3) of the Rules of the Supreme Court, appellants have filed a single Jurisdictional Statement for both causes, motions to dismiss for want of a substantial federal question are similarly consolidated.

---

### **QUESTIONS PRESENTED.**

The State of California by action of its Legislature and a vote of its people, in 1952, enacted a constitutional amendment providing, in part, that no person or organization advocating forcible overthrow of the federal or state government or support of a foreign government against the United States in the event of hostilities would receive any tax exemption from the state or subordinate agencies. The Legislature, in 1953, enacted procedural legislation requiring establishment of this requisite fact by a declaration under oath in certain cases involving property tax exemption.

California by a constitutional provision exempts one thousand dollars of the property of each veteran of certain specified wars and campaigns from state

property taxation. In these cases, two veterans, plaintiffs in the trial court and appellants in this Court, sought the stated property tax exemption without executing the required declaration of non-advocacy appended to the property tax return. The appellee assessor, Justin A. Randall, of Contra Costa County, and the Assessor of the appellee City and County of San Francisco denied the exemptions. After appellants brought separate actions to challenge said rulings, the action of the assessors was ultimately upheld by the judgments and opinions of the California Supreme Court.

The questions presented are, with one exception, related to the asserted invalidity, under the United States Constitution, of the state constitutional provision precluding grants of tax exemption to those who advocate violent overthrow of the government and of the procedural statute which implements said provision, as applied to the property tax exemption given under California law to a veteran by reason of his military service.

Briefly stated, these issues are raised:

1. Does an oath declaration requirement applying only to present, personal advocacy of forcible overthrow of the federal and state governments and support of a foreign government in event of hostilities, as a condition to the award of a tax exemption to veterans for military service, violate freedom of speech and assembly or equal protection of the laws as protected by the First and Fourteenth Amendments to the United States Constitution?

2. Does such requirement violate procedural due process under the Fourteenth Amendment or constitute a Bill of Attainder, under Article I, Section 9, Clause 3?

3. Does such requirement violate the privileges and immunities clause of the Fourteenth Amendment?

4. Does such requirement violate Article VI, Clause 2, either by invading a field pre-empted by or by being in conflict with the federal criminal statutes defining and providing criminal penalties for subversion and sedition?

---

#### **STATEMENT.**

The facts in both of these cases are based solely on stipulations introduced in the respective trial Courts. While there is no factual conflict, there is no such concession as claimed by appellants, on pages seven and eight of their Jurisdictional Statement, that appellants were in all respects properly qualified to receive tax exemptions except for their failure to execute the non-advocacy declaration. Since the respective stipulations merely covered fulfillment of such requirements as veteran status, residence and possession of no more than the requisite amount of property and did not extend to the fact of advocacy or non-advocacy by the appellants, there is nothing in the record constituting any such concession. Rather, the conclusions of law of the trial court in the *Prince* case found that that appellant did not qualify under the oath provisions "in that he has not shown himself

to be a person entitled to receive the said exemption.” (Clerk’s transcript, proceedings in the San Francisco Superior Court, page 45, line 20 through page 46, line 2.) As the California Supreme Court held, an “assumed fact” as to the non-existence of advocacy is not enough for the purposes of taxation. (Appendices to Statement, page 47.)

In the *Prince* case, the Superior Court of the City and County of San Francisco rendered judgment against Prince in an action brought by him against the City and County of San Francisco to recover taxes paid under protest, together with a full and carefully documented opinion of Judge William T. Sweigert which appears as Appendix B to the Jurisdictional Statement (page 6 of Appendices).

In the *Speiser* case, the Superior Court of Contra Costa County rendered judgment in favor of appellant Speiser in an action for declaratory relief against Justin A. Randall, the Assessor of said county, with an opinion of five judges sitting en banc pursuant to a local practice, which appears as Appendix A of this Statement (page 1 of Appendices).

Appeals were taken to the California Supreme Court in both cases, where the court, after exhaustive briefing and full oral argument, decided that no federal or state constitutional provision is violated by requiring a veteran to take a narrowly drawn oath limited to present, personal non-advocacy of forcible overthrow of the United States and State governments and of support of a foreign government against the United States in the event of hostilities as a rea-



sonable condition to qualification for a tax exemption given specially to veterans by reason of their veteran status alone, as a reward for and incentive to patriotism.

There is no question that the asserted federal questions were timely claimed and appropriately preserved.

The relevant provisions of the state Constitution and state law are the following:

California Constitution, Article XIII, Section 1, states the general rule of the taxability of all property in the state:

"All property in the State except, as otherwise in this Constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, or as hereinafter provided. . . ."

Section 201, Revenue and Taxation Code of the State of California constitutes a legislative implementation of the foregoing rule:

"All property in this State, not exempt under the laws of the United States or of this State, is subject to taxation under this code."

California Constitution, Article XIII, Section 11 $\frac{1}{4}$ , creates the veterans' exemption:

"The property to the amount of \$1,000 of every resident of this State who has served in the army, navy, marine corps, coast guard or revenue marine (revenue cutter) service of the United States (1) in time of war, or (2) in time of peace, in a campaign or expedition for service in which a

medal has been issued by the Congress of the United States, and in either case has received an honorable discharge therefrom, or who after such service of the United States under such conditions, has continued in such service, or who in time of war is in such service, or who has been released from active duty because of disability resulting from such service in time of peace or under other honorable conditions, or lacking such amount of property in his own name, so much of the property of the wife of any such person as shall be necessary to equal said amount; . . . shall be exempt from taxation; provided, this exemption shall not apply to any person named herein owning property of the value of \$5,000 or more, or where the wife of such soldier or sailor owns property of the value of \$5,000 or more. No exemption shall be made under the provisions of this section of the property of a person who is not legal resident of the State; . . .”

(Deletions cover other extensions of the exemption not relevant to this case.)

The provision of the State Constitution which authorizes the loyalty qualification requirement before this Court is Article XX, Section 19:

“Notwithstanding any other provision of this Constitution, no person or organization which advocates the overthrow of the Government of the United States or the State by force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall:

(a) Hold any office or employment under this State, including but not limited to the University

of California, or with any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State: or .

(b) Receive any exemption from any tax imposed by this State or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State.

The Legislature shall enact such laws as may be necessary to enforce the provisions of this section."

The 1953 session of the Legislature enacted Section 32 of the Revenue and Taxation Code as a procedural measure implementing the constitutional provision in the field of property taxation:

"Any statement, return, or other document in which is claimed any exemption, other than the householder's exemption, from any property tax imposed by this State or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State shall contain a declaration that the person or organization making the statement, return, or other document does not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means nor advocate the support of a foreign government against the United States in event of hostilities. If any such statement, return, or other document does not contain such a declaration, the person or organization making such statement, return, or other document shall not receive any exemption from

the tax to which the statement, return, or other document pertains. Any person or organization who makes such declaration knowing it to be false is guilty of a felony. This section shall be construed so as to effectuate the purpose of Section 19 of Article XX of the Constitution."

---

**THE FEDERAL QUESTIONS PRESENTED BY  
APPELLANTS ARE NOT SUBSTANTIAL.**

**PRELIMINARY STATEMENT.**

Appellees, the City and County of San Francisco and Assessor of the County of Contra Costa, State of California, have made this motion on the basis that the declaration included as part of the affidavit required for the veterans' exemption is a narrowly drawn form of oath limited to language judicially approved by this Court. In prescribing only present, as distinguished from past advocacy, in touching personal conduct, as differentiated from mere affiliations, or beliefs, and in being limited to that narrow class of speech eliciting forcible overthrow of our government and war support of foreign governments, this form of declaration is justified as a reasonable condition for qualification for civil benefits of tax exemption not extended to all citizens, but merely to veterans as a reward for and incentive to the patriotism which the Legislature and People have determined and the Supreme Court of California has found will be thus stimulated and fostered and which advocates of destruction of the government derogate.

As only the Jurisdictional Statement in the instant causes has been served on appellees, appellees will merely refer to same and will not discuss the Jurisdictional Statement in *First Methodist Church of San Leandro v. Hortsmann* and *First Unitarian Church v. Horstmann*, sought to be incorporated on page ten of the Jurisdictional Statement. Appellees will answer appellants' contentions seriatim.

---

**I. PROVISIONS OF THE OATH, AS PROPERLY INTERPRETED BY THE CALIFORNIA SUPREME COURT IN LINE WITH THE DECISIONS OF THIS COURT, ARE DIRECTED TO ONLY THAT SPEECH WHICH CAN BE PROPERLY REGULATED.**

In contending that this form of oath transgresses the rule of *Yates v. United States*, 354 U.S. ...., 1 L. Ed. 2d 1356, that advocacy of ideas as distinguished from action may not be inhibited, appellants make a fundamental error. Appellants fail to recognize that the effect of the particular regulation on speech must be measured by the effect of the language of the oath, as properly interpreted.

In the *Yates* case, this Court held that the broad language of the Smith Act (recodified as 18 U.S.C. §2385; 62 Stat. 808), which covers not only advocating, but also abetting, advising and teaching the "duty, necessity, desirability or propriety" of forcible overthrow would be properly interpreted so as to be limited to "advocacy directed at promoting unlawful action":

"We are thus faced with the question whether the Smith Act prohibits advocacy and teaching of

forceful overthrow as an abstract principle, divorced from any effort to instigate action to that end, so long as such advocacy or teaching is engaged in with evil intent. We hold that it does not . . .

"We need not, however, decide the issue before us in terms of constitutional compulsion, for our first duty is to construe this statute. In doing so we should not assume that Congress chose to disregard a constitutional danger zone so clearly marked, or that it used the words 'advocate' and 'teach' in their ordinary dictionary meanings when they had already been construed as terms of art carrying a special and limited connotation. . . . The statute was aimed at the advocacy and teaching of concrete action for the forcible overthrow of the Government, and not of principles divorced from action."

354 U.S. at \_\_\_\_\_, 1 L.Ed. 2d at 1374-1376.

Further, the opinion held that a purpose to cause others to engage in resistance to the government "perhaps during war or during attack upon the United States from without" would be covered by the statute and stated:

"It is not necessary for conviction here that advocacy of 'present violent action' be proved."

354 U.S. at \_\_\_\_\_, 1 L.Ed. 2d at 1382, 1386;

See also 1384.

The opinion of the California Supreme Court is in full compliance with the mandate of this Court in the *Yates* case. The California opinion (Appendices, page 39) states that the oath requirement "is not a



limitation on mere belief but is a limitation on action—the advocacy of certain prescribed conduct.” The state opinion significantly adds, “Advocacy constitutes action and the instigation of action, not mere belief or opinion.” Further in the opinion (Appendices, pages 46-47), the California Supreme Court, in a discussion of *Dennis v. United States*, 341 U.S. 494, directly defined and thus limited the oath requirement to *only that activity prescribed by the Smith Act* (italics added):

“In that case [*Dennis v. United States*] the court upheld an instruction to the jury that if the defendants actively advocated governmental overthrow by force and violence as speedily as circumstances would permit, then as a ‘matter of law . . . there is sufficient danger of a substantive evil that the Congress has a right to prevent to justify the application of the statute under the First Amendment of the Constitution.’ *In the present case the constitutional provision is concerned with those who advocate the same prohibited activity.*” (italics added)

Thus the California Supreme Court has placed the same interpretation and the same limitations on the application of the tax exemption qualification requirement as this Court has done in regard to the Smith Act in the *Yates* and *Dennis* cases. See *Garner v. Board of Public Works of Los Angeles*, 341 U.S. 716, 723-724 (oath containing similar wording.)

The reversal of the judgments of conviction in the *Yates* case was based merely on faulty instruction of the jury and represented an upholding and not a

repudiation of the statutory language condemning the proscribed advocacy. Similar or broader language than that used in the California Constitution and statutory provisions has been consistently upheld by this Court, in criminal prosecutions as well as in oath cases revoking civil benefits as well as conditioning qualification for same.

*Dennis v. United States, supra;*

*American Communications Association v. Douds*, 339 U.S. 382;

*Gerende v. Board of Supervisors*, 341 U.S. 56 (oath form covered "advising" and "teaching", in addition);

*Garner v. Board of Public Works, supra*, (similar form);

*Pockman v. Leonard*, 39 Cal. 2d 676; appeal dismissed for want of a substantial federal question, 345 U.S. 962;

*Hirschman v. County of Los Angeles*, 39 Cal. 2d 698, cert. denied as *Petherbridge v. Los Angeles County*, 345 U.S. 1002.

Said cases have all upheld regulations expressly directed to "advocacy" of forcible overthrow.

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**II. THE ONLY ISSUE IN THE PRESENT CASE IS THE CONSTITUTIONALITY OF THE APPLICATION OF THE OATH REQUIREMENT TO APPELLANTS.**

On pages thirteen and fourteen of their Statement, appellants raise contentions not made in the lower

courts. They thus ignore California Revenue and Taxation Code Section 26:

“If any provision of this code, or its application to any person or circumstance, is held invalid, the remainder of the code, or the application of the provision to other persons or circumstances, is not affected.”

Moreover, under state law, particularly in tax cases, only the person injuriously affected by the provision may complain.

*County of Los Angeles v. Eikenberry*, 131 Cal. 461, 468, 63 Pac. 766, 768;

See also, *People v. Perry*, 212 Cal. 186, 193, 298 Pac. 19, 22, 76 ALR 1331.

Since the application of the challenged provisions to other taxpayers is neither at issue nor in any manner indicated in the record, no question is presented to this Court at this time as to such applications. Cf. *Parker v. County of Los Angeles*, 338 U.S. 327.

Rather, the California Supreme Court specifically indicated that there are special reasons for the validity of the application of the oath provision to veterans. *Prince v. City and County of San Francisco*, Appendix D (Appendices, page 23) and *First Unitarian Church of Los Angeles v. County of Los Angeles* (discussing the veterans' tax exemption) Appendix E (Appendices, page 45.) These reasons are found to be that veterans as the recipients of such special benefits, are intended to be rewarded for past patriotism, to be encouraged as to their present loyalty and to serve as an example of dedicated service. These rea-

sons, found by the California Supreme Court to be the public purposes involved, justify as the only issue at bar, the application of the property tax exemption qualification to veterans, as distinguished from others who qualify not by reason of a special personal status but by reason of the nature or type of property owned or, as organizations, by the nature of their purposes or activities.

While appellants rely on *American Communications Association v. Douds*, 339 U.S. 382, as limiting the use of the oath procedure to situations involving a few individuals, the full holding of that case expresses the broader test that in a case of an "indirect, conditional, partial abridgment," the effect of the regulation is to be weighed as against the public interest served.

"When particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional, partial abridgment of speech, the duty of the courts is to determine which of these two conflicting interests demands the greater protection under the particular circumstances presented. . . . 39 U.S. at 399.

Further language in the *Douds* case fully supports our position that the clear and present danger test is applied differently to a limited abridgment of speech protecting a substantial public interest other than basic national security.

"But in suggesting that the substantive evil must be serious and substantial, it was never the intention of this Court to lay down an absolutist test measured in terms of danger to the Nation.

When the effect of a statute or ordinance upon the exercise of First Amendment freedoms is relatively small and the public interest to be protected is substantial, it is obvious that a rigid test requiring a showing of imminent danger to the security of the Nation is an absurdity. . .”  
339 U.S. at 397.

In the present cases the California Supreme Court has determined from the subject legislation that substantial public interests are served thereby. In *Dennis v. United States*, *supra*, 341 U.S. at 506, this Court analyzed and approved its prior holding in *Gitlow v. New York*, 268 U.S. 652, as to the effect to be given to a state regulation specifically directed at that narrow type of speech involved in those cases, as in the causes at bar.

“Gitlow, however, presented a different question. There a legislature had found that a certain kind of speech was, itself, harmful and unlawful. The constitutionality of such a state statute had to be adjudged by this Court just as it determined the constitutionality of any state statute, namely, whether the statute was ‘reasonable’. Since it was entirely reasonable for a state to attempt to protect itself from violent overthrow, the statute was perforce reasonable.”

*Dennis v. United States*, *supra*, 341 U.S. at 506.

Also see:

*American Communications Association v. Douds*,  
339 U.S. at 401 (effect of legislative determination.)

Judged by these standards, this narrow form of oath, couched in language approved by this Court (see Sections I, *supra*, and III, *infra*), is permissible as an "indirect, conditional, partial abridgment of speech" since it operates not as a criminal sanction, as a revocation of public employment rights or as a condition to holding elective office (all of which have been approved by this Court), but merely as a condition to the qualification for the award of a limited tax exemption benefit dedicated to securing the very objectives of patriotism which the oath has been expressly found to serve. Judged by its limited impact as contrasted with the public purpose served, the constitutionality of this legislation is affirmatively established.

*American Communications Association v. Douds*,  
*supra*;

*Dennis v. United States*, *supra*;

*Garner v. Board of Public Works of Los Angeles*, *supra*;

*Gerende v. Board of Supervisors*, *supra*;

*Adler v. Board of Education*, 342 U.S. 485.

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**III. THE INCLUSION OF "ADVOCACY OF THE SUPPORT OF A FOREIGN GOVERNMENT AGAINST THE UNITED STATES IN EVENT OF HOSTILITIES" WITHIN THE CALIFORNIA CONSTITUTIONAL PROVISION AND STATUTE PRESENTS NO SUBSTANTIAL FEDERAL QUESTION.**

Appellants misread the decision of this Court in *Yates v. United States*, *supra*, which, contrary to their



contention referred to and reaffirmed the holding of the *Dennis* case "that advocacy of violent action to be taken at some future time was enough." 354 U.S. at 1376, 1 L.Ed. 2d at 1376. The *Dennis* case held, as noted by the *Yates* case, that the future action need only be "at a propitious time" or "when the leaders feel the circumstances permit." 341 U.S. at 507.

Hence, we contend that advocacy, as an accepted concept of action by the way of support of a foreign government in the future contingency of war between it and the United States, is subject to regulation as conduct similar to and closely allied with advocacy of forcible overthrow, as a form of accomplishing same through destruction of the government. The California Supreme Court (Appendices, page 46) similarly held that such conduct would frustrate the state's program of tax exemption, as found by that Court to have been so limited as to exclude advocacy of such conduct, in the attainment of public purposes by the Legislature and the electorate. It is noteworthy that even the privileges of law practice and of a university education have been denied by reason of failures, respectively, to take an oath of allegiance and support of federal and state governments and to engage in compulsory military training. *In re Summers* 325 U.S. 561; also see *In re Anastaplo* (Supreme Court, Illinois), 3 Ill. 2d 471, 121 N.E. 2d 826, appeal dismissed for want of a substantial federal question and cert. den., 348 U.S. 946; *Hamilton v. Regents of the University of California*, 293 U.S. 245.

Likewise, when appellants contend that the language dealing with support of a foreign government, is judicially unconstrued, they ignore those authorities, cited by appellees to the California Supreme Court, which upheld Section 3 of the Espionage Act of 1917 (Act of June 15, 1917, c. 30, 40 Stat. 217, as amended by Act May 16, 1918, c. 75, §1, 40 Stat. 553) which imposed penal sanctions on "Whoever shall by word or act support or favor the cause of any country with which the United States is at war, or by word or act oppose the cause of the United States therein. . . ."

*Lockhart v. United States,*

264 Fed. 14, cert. den. 254 U.S. 645;

*Wimmer v. United States,*

264 Fed. 11, cert. den. 253 U.S. 494;

See also, upholding the Espionage Act of 1917, in its entirety;

*Frohwerk v. United States,* 249 U.S. 204;

*Debs v. United States,* 249 U.S. 211;

*Abrams v. United States,* 250 U.S. 616;

*United States v. Burleson,* 255 U.S. 407.

Moreover, in view of the fact of prior judicial definition of the words "support" and "hostilities", there can be no just claim that the terms in question are unconstitutionally vague.

*United States v. Schulze,* 253 Fed. 377, 379-380, aff'd as *Schulze v. United States,* 259 Fed. 189 (definition of "support");

*Schoborg v. United States,* 264 Fed. 1, at 5 (same);

*Samuels v. United Seamen's Service, Inc.*, 165

F. 2d 409, 411-412 (definition of hostilities as "open and hostile warfare activity");

*Burger v. Employees' Retirement System*, 101

Cal. App. 2d 700, 702 (definition of "hostilities"; accord.)

See also:

*Kaiser v. Hopkins*, 6 Cal. 2d 537 (definition of "war" for purpose of veterans' property tax exemption as active conduct of hostilities.)

#### IV. THE DECISION OF THE CALIFORNIA SUPREME COURT PROPERLY UPHOLDS A PERMISSIBLE REGULATION OF THAT SPEECH ADVOCATING FORCE AND VIOLENCE IN A PROPER RELATIONSHIP TO PERMISSIBLE PUBLIC OBJECTIVES.

As the California Supreme Court has found (also see Section II, *supra*), the limitations on the state's tax exemption program are justified on the basis of preservation of the purpose of the tax exemption as a reward for past and an incentive to continued patriotism and in discouraging participation in the violent overthrow or destruction of our government by limiting rewards to those who are not so engaged.

In view of the limited application of the clear and present danger test to regulations with a "relatively small" effect on First Amendment freedoms and a substantial public interest at stake (*American Communications Association v. Douds*, *supra*, 339 U.S.

at 397, Section II, *supra*), this conditional non-penal limitation on that type of speech otherwise subject to criminal proscription fulfills the test stated both as aiding to prevent advocacy of destruction of the government and perversion of the fundamental patriotic purpose of the tax exemption.

To the extent possible for a self-executing state constitutional amendment submitted to and enacted by vote of the people, there is a clear intendment of these substantial purposes, as found by the California Supreme Court.

It need hardly be pointed out that, properly considered from the individual standpoint, denial of a limited tax exemption, awardable in the reasonable discretion of the state, has far less effect on the extent of free speech than criminal convictions and denials of private and public offices and employment upheld, on some occasions, on provisions in terms more restrictive of First Amendment freedoms than the narrow language at bar. (See cases cited Section II, *supra*.) Thus, the limited effect of the provisions before this Court, weighed against the substantial public interest protected by the enactments, justifies the determination of the California Supreme Court, made on examination of the precedents of this Court, that the public interest "demands the greater protection under the particular circumstances presented." *American Communications Association v. Douds*, *supra*, 339 U.S. at 399.

Thus distinguished are conclusions of other state courts as to whether other public interests are served

by other (and incidentally broader) types of oath regulations. Cf. *Lawson v. Housing Authority of City of Milwaukee* (Supreme Court, Wisconsin) 270 Wis. 269, 70 NW 2d 605, cert. den. 350 U.S. 882 (dealing with an oath of *non-membership* in organizations listed as subversive).

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**V. THERE IS NO CONFLICT AMONG ANY COURTS, STATE OR FEDERAL, AS TO WHETHER AN OATH PROPERLY RESTRICTED TO PRESENT, PERSONAL ADVOCACY OF VIOLENT OVERTHROW AND DESTRUCTION OF OUR GOVERNMENT MAY BE A CONDITION TO QUALIFICATION FOR TAX EXEMPTION AWARDED SPECIFICALLY FOR PUBLIC PURPOSES IMPERILED BY SUCH ADVOCACY.**

As appellants themselves admit, whether it is a privilege or a right which is concerned is not controlling. As pointed out in the previous section, there is no basic distinction in any event in the test by which the interests of free speech are to be balanced, in the case of an "indirect, conditional, partial abridgment" as against the substantial quality of the public purpose to be served. *American Communications Association v. Douds*, *supra*, 339 U.S. at 399. As this Court also there stated, after listing numerous instances in which First Amendment rights have been held properly infringed to protect the public from various evils of conduct, prejudicing privacy, municipal government, health, moral standards, the public service or the bar:

"We have never held that such freedoms are absolute. The reason is plain. As Mr. Chief Justice Hughes put it, 'Civil liberties, as guar-



anted by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses.' *Cox v. New Hampshire*, supra (312 U.S. at 574, 85 L.Ed. 1052, 61 S. Ct. 762)."

339 U.S. at 399.

Appellants do not cite one case that holds an oath or other qualification requirement invalid when same has been based upon a personal pledge of present non-advocacy of forcible overthrow of the government.

In the public housing oath cases cited by appellants, there was involved not only a different public purpose—i.e., providing better housing that was not served, but the oath mechanism also not only proscribed affiliation but extended the proscription to organizations loosely named by mere administrative fiat. Indeed, *Rudder v. United States*, 226 F. 2d 51, 53-54 and *Housing Authority of the City of Los Angeles v. Cordova*, 130 Cal. App. 2d Supp. 883, 884, 279 P. 2d 215, and *Kutcher v. Housing Authority of Newark*, (Supreme Court, New Jersey), 20 N. J. 181, 119 A. 2d 1, 4, cited by appellants, all expressly except from the decisions situations where tenants of housing projects are sought to be evicted because engaged in advocating violent overthrow or are subversive.

Likewise the decision of *Danskin v. San Diego Unified School District*, 28 Cal. 2d 536, to the extent it is not superseded by the decisions of the California Supreme Court in the present cases, similarly ex-



cluded from consideration personal advocacy of overthrow and also involved a complete prohibition of speech on all topics, not confined to such advocacy. Cf. *DeJonge v. Oregon*, 299 U.S. 353.

Appellants ignore the state cases which by forms of oaths and regulations much closer to those at bar have upheld renunciation of present advocacy of destruction of the government as a condition to appropriate civil benefits.

*Huntamer v. C  e*, (Supreme Court, Washington) 40 Wash. 2d 767, 246 P. 2d 489 (oath—elected officials);

*Fitzgerald v. City of Philadelphia* (Supreme Court, Pa.) 376 Pa. 379, 102 A. 2d 887 (oath—dismissal of staff nurse in city hospital);

*Pickus v. Board of Education of the City of Chicago* (Supreme Court, Illinois), 9 Ill. 2d 599, 138 NE 2d 532 (oath—dismissal of teacher);

*Communist Party v. Peek*, 20 Cal. 2d 536, 127 P. 2d 889 (denial of participation in primary election to party advocating or teaching forcible overthrow);

*Steinmetz v. Board of Education*, 44 Cal. 2d 816, 285 P. 2d 617, cert. den., 351 U.S. 915 (dismissal of state college professor for failure to answer before Board re subversive affiliations);

*Board of Education v. Cooper*, (District Court of Appeal, California) 136 Cal. App. 2d 513, 289 P. 2d 80 (dismissal of teacher—failure to reply as to “present personal advocacy”);

*Appeal of Albert* (Supreme Court, Pa.) 372 Pa. 13, 92 A. 2d 663 (dismissal of teacher involved in advocacy and subversion);

*Milasinovich v. Serbian Progressive Club* (Supreme Court, Pa.), 369 Pa. 26, 84 A. 2d 571 (corporate charter revoked for advocacy of overthrow of government);

*Davis v. University of Kansas*, 129 F. Supp. 716, 718 (dismissal of professor for failure to answer as to subversive affiliation and activity);

*In re Anastaplo*, *supra*, appeal dis. for want of a substantial federal question, *supra* (denial of admission to bar applicant who refused to answer as to affiliations and stated belief in forcible overthrow);

Cf. *Konigsberg v. State Bar of California*, 354 U.S. \_\_\_\_\_, at \_\_\_\_\_, 1 L.Ed. 2d 810 at 824-825 where it was expressly determined that the bar applicant not only did not and had not advocated violent overthrow but had testified under oath to and previously stated disavowal of and active opposition to advocacy of force and violence.)

The above cases, where advocacy of forcible overthrow and failure to give duly constituted administrative authority information as to same allowed revocation of benefits, constitute a large body of state authority that even more amply justifies reasonable refusal of a benefit for which the applicant must affirmatively qualify as part of a civil administrative

process subject to judicial review. Cf. *In re Anastaplo*, *supra*. Under California law, the burden of proof for qualification for a tax exemption is on the taxpayer. *Chesney v. Byram*, 15 Cal. 2d 460, 101 P. 2d 1106 (veterans' exemption.)

Combined with the sanction of the restriction and oath form at bar as a permissible speech regulation by this Court in the *Dennis, Douds, Garner, Gerende* and *Adler* cases, which also fully answer other contentions as to due process, equal protection, privileges and immunities, and bill of attainder which are raised but not briefed by appellants, the authorities lend strong support to our contention that no substantial federal question is raised by appellants. The only other question, that of asserted federal supersession by virtue of the laws providing penal sanctions for sedition, we assert to be likewise insubstantial since, as the California Supreme Court observed, there would be no supersession of a civil regulation controlling the subjects of state taxation, where the federal government has obviously not entered, much less occupied the field, nor have the decisions of this Court upholding state civil loyalty regulations been deemed affected, in more recent opinions of this Court, by the decision of *Commonwealth of Pennsylvania v. Nelson*, 350 U.S. 497. See *Slochower v. Board of Education*, 350 U.S. 551.

**CONCLUSION.**

Since all federal questions have been resolved in precedent or in principle by this Court and since appellants have thus not complied with California law as to qualification for the subject tax exemptions, we respectfully ask that the motion to dismiss the appeals in these causes be granted.

Dated, San Francisco, California,  
October 16, 1957.

Respectfully submitted,

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SUPREME COURT, U. S.

# In the Supreme Court

OF THE

**United States**

OCTOBER TERM, 1957

**Nos. 483, 484**

Office - Supreme Court, U.S.

FILED

MAR 31 1958

T. FEY, Clerk

LAWRENCE SPEISER,

*Appellant,*

vs.

JUSTIN A. RANDALL, as Assessor of Contra  
Costa County, State of California,

*Appellee.*

No. 483

DANIEL PRINCE,

*Appellant,*

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation,

*Appellee.*

No. 484

Appeal from the Supreme Court of the State of California.

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**In the Supreme Court**  
**OF THE**  
**United States**

**OCTOBER TERM, 1957**

**Nos. 483, 484**

**LAWRENCE SPEISER,**

*Appellant,*

**vs.**

**JUSTIN A. RANDALL, as Assessor of Contra  
Costa County, State of California,**

*Appellee.*

**No. 483**

**DANIEL PRINCE,**

*Appellant,*

**vs.**

**CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation,**

*Appellee.*

**No. 484**

**Appeal from the Supreme Court of the State of California.**

**APPELLEES' CONSOLIDATED BRIEF.**

**OPINIONS BELOW.**

The Superior Court of the County of Contra Costa in the case of *Speiser v. Randall* issued an unreported opinion, which is set forth as Appendix A of the Ju-

risdictional Statement. The opinion of the Supreme Court of the State of California in said case appears on pages 22-23 of the Record and is officially reported in 48 Cal. 2d 903 and unofficially reported in 311 P. 2d 546.

The Superior Court of the City and County of San Francisco in the case of *Prince v. City and County of San Francisco* issued an unreported opinion, which is set forth on pages 50-59 of the Record. The opinion of the Supreme Court of the State of California in said case appears on pages 64-67 of the Record and is officially reported in 48 Cal. 2d 472 and unofficially reported in 311 P. 2d 544.

The opinions of the California Supreme Court in the causes at bar incorporate the reasoning and the conclusions of that Court in a companion case, *First Unitarian Church of Los Angeles v. County of Los Angeles*, now on file in this Court as Oct. Term 1957, No. 382 (R. 35-89) and which is officially reported in 48 Cal. 2d 419 and unofficially reported in 311 P. 2d 508.

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#### JURISDICTION.

The judgments of the Supreme Court of the State of California in these causes were filed in that Court on April 24, 1957. Notices of appeal were filed with the Supreme Court of the State of California on May 27, 1957.

Appellants invoked the jurisdiction of this Court under Title 28, U.S.C., Section 1257(2), pursuant to

a consolidated jurisdictional statement for both cases filed on September 19, 1957.

Respondents filed a Motion to Dismiss, but this Court entered an order noting probable jurisdiction and consolidating the cases for hearing on the Summary Calendar on November 25, 1957. (R. 71.)

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### QUESTIONS PRESENTED.

The State of California by action of its Legislature and a vote of its people, in 1952, enacted a constitutional amendment providing, in part, that no person or organization advocating forcible overthrow of the federal or state government or support of a foreign government against the United States in the event of hostilities would receive any tax exemption from the state or subordinate agencies. The Legislature, in 1953, enacted procedural legislation requiring establishment of this requisite fact by a declaration under oath in certain cases involving property tax exemption.

California by a constitutional provision exempts one thousand dollars of the property of each veteran, or his certain relatives, of certain specified wars and campaigns from state property taxation provided the assessed value of the total property of the veteran or relative does not exceed \$5,000.00. In these cases, two veterans, plaintiffs in the trial Court and appellants in this Court, sought the stated property tax exemption without executing the required declaration of

non-advocacy appended to the property tax return. The appellee assessor, Justin A. Randall, of Contra Costa County, and the Assessor of the appellee City and County of San Francisco denied the exemptions. After appellants brought separate actions to challenge said rulings, the action of the assessors was ultimately upheld by the judgments and opinions of the California Supreme Court.

The questions presented are, with one exception, related to the asserted invalidity, under the United States Constitution, of the state constitutional provision precluding grants of tax exemption to those who advocate violent overthrow of the government and of the procedural statute which implements said provision, as applied to the property tax exemption given under California law to a veteran by reason of his military service.

Briefly stated, these issues are raised:

1. Does an oath declaration requirement applying only to present, personal advocacy of forcible overthrow of the federal and state governments and support of a foreign government in event of hostilities, as a condition to the award of a State tax exemption to veterans for military service, violate freedom of speech?
2. Is a state prohibited from utilizing a narrow form of declaration in a form of oath or affirmation approved by this Court as a condition to qualify for a property tax exemption pursuant to conditions prescribed by the people of the state in their state Constitution?

3. Does such requirement violate procedural due process under the Fourteenth Amendment?

4. Does the selection by a state of certain objects as the recipients of a subsidy in the form of a tax exemption and the imposition of conditions for qualification for said bounty, raise any federal question of equal protection within the cognizance of this Court?

5. Does the imposition by a state of such conditions for qualification for tax exemption conflict with federal penal statutes regulating subversion so as to violate United States Constitution Article VI, Clause 2?

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**CONSTITUTIONAL PROVISIONS  
AND STATUTES INVOLVED.**

The citations of relevant Federal and state constitutional and statutory provisions are here listed. The full text of same is set forth in Appendix "A" of this brief.

*United States Constitution*, First Amendment;  
*United States Constitution*, Fourteenth Amendment;

*United States Constitution*, Article VI, clause 2;  
*California Constitution*:

Article XIII, Section 1 $\frac{1}{4}$ ;

Article XX, Section 19;

*California Revenue and Taxation Code*:  
Sections 32, 26.



### STATEMENT OF THE CASE.

The facts in both of these cases are based solely on stipulations introduced in the respective trial Courts. (See R. 18-20, 45-49.) It should be noted that the conclusions of law of the trial Court in the *Prince* case found that that appellant did not qualify under the oath provisions "in that he has not shown himself to be a person entitled to receive the said exemption." (R. 61.) As the California Supreme Court held, an assumed fact as to the non-existence of advocacy is not enough for the purposes of taxation.

*First Unitarian Church v. County of Los Angeles, supra.*

In the *Prince* case, the Superior Court of the City and County of San Francisco rendered judgment against Prince in an action brought by him against the City and County of San Francisco to recover taxes paid under protest, together with a full and carefully documented opinion of Judge William T. Sweigert. (R. 50-59.)

In the *Speiser* case, the Superior Court of Contra Costa County rendered judgment in favor of appellant Speiser in an action for declaratory relief against Justin A. Randall, the Assessor of said county.

Appeals were taken to the California Supreme Court in both cases, where the Court, after exhaustive briefing and full oral argument, decided that no federal or state constitutional provision is violated by requiring a veteran to take a narrowly drawn oath limited to present, personal non-advocacy of forcible

overthrow of the United States and State governments and of support of a foreign government against the United States in the event of hostilities as a reasonable condition to qualification for a tax exemption given specially to veterans by reason of their veteran status alone, as a reward for and incentive to patriotism.

Except for appellants' contentions as to violation of the Equal Protection clause by the State's choice of different procedures for qualification for different forms of taxes, which we contend do not present a Federal question at all, all Federal questions now presented by appellants were properly preserved, with one exception. The exception is the contention (Appellants' Consolidated Opening Brief, pp. 56-58) that aliens are denied Equal Protection by the requirement of qualifying for tax exemption by use of the declaration in question. This question was not presented to the Courts below.

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#### **SUMMARY OF ARGUMENT.**

The State of California in adopting a constitutional amendment by the vote of the people and appropriate legislation in enforcement thereof, has exercised powers traditionally reserved to the states under our Federal system, insofar as it has provided a condition for qualification for the award of a tax exemption from taxes prescribed by state law. Neither the form of the oath, the scope of its coverage, or its effect im-

pinge on any prohibition of the Federal constitution. The limitation of the oath to speech which constitutes a present personal advocacy of forcible overthrow of government, removes from this case the question of any violation of the rights of free political discussion, which are preserved to the American people under the First and Fourteenth Amendments. As Chief Justice Hughes so appropriately stated in *De Jonge v. Oregon*, 299 U.S. 353, in distinguishing "free political discussion" from the use of speech to incite to violence and crime:

" . . . These rights may be abused by using speech or press or assembly in order to incite to violence and crime. The people through their legislatures may protect themselves against that abuse." (299 U.S. at 364.)

While the importance of the free speech guarantee cannot and should not be minimized, the application of presumptions and slogans do not solve particular problems in this field.

*Ullmann v. United States*, 350 U.S. 422, 428.

The importance of the determination by a state by constitutional amendment of its people even in the field of free speech, that certain regulation is needed, is to be given its proper significance.

*American Communications Assn. v. Douds*, 339 U.S. 382.

The requirement that a veteran subscribe to an oath or affirmation of non-advocacy of overthrow of the

United States and State government by force, violence or other unlawful means is not an improper invasion of the free speech guarantee.

*Dennis v. United States*, 341 U.S. 494;

*American Communications Assn. v. Douds*,  
*supra*;

*Garner v. Board of Public Works of Los Angeles*, 341 U.S. 716.

The present declaration requirement is narrower in its content and less sweeping in its effect than other forms of oath upheld by this Court. It does not concern belief, nor does it affect affiliations or extend beyond the scope of personal conduct. Cf. *American Communications Assn. v. Douds*, *supra*. Nor does the present oath concern past conduct or beliefs. Cf. *Garner v. Board of Public Works of Los Angeles*, *supra*.

When regulation is so designed, speech is subject to regulation limited to restriction of advocacy of forcible overthrow.

The present requirement is properly limited by the California Supreme Court to advocacy construed as an incitement to action. So construed, the California State Constitutional provision and statute are valid on their face, and as here applied.

*Yates v. United States*, 354 U.S. 298;

*Dennis v. United States*, *supra*.

The "clear and present danger" test does not apply in this case since the enactment before this Court is

specifically and narrowly directed to speech as limited to advocacy of forcible overthrow.

*Dennis v. United States, supra;*

*Beauharnais v. Illinois, 343 U.S. 250.*

And said test is not applicable to a state provision merely requiring qualification for benefits as distinguished from the imposition of criminal penalties. Cf. *Garner v. Board of Public Works of Los Angeles, supra; Gerende v. Board of Supervisors, 341 U.S. 56.*

As tested by the result of *American Communications Assn. v. Douds, supra*, the present regulation is an "indirect conditional, partial abridgment of speech." Political discussion is not infringed by regulation of the type of advocacy at bar.

*Dennis v. United States, supra;*

*Haristades v. Shaughnessy, 342 U.S. 580.*

Moreover, this particular type of speech ranks sufficiently low in the scale of values so as to justify regulation connected with the giving of an exemption to veterans for the purpose of stimulating and rewarding patriotism. Both from the standpoint of the existence of actual public danger in a time of grave emergency, and from the standpoint of protection of a valid state purpose in enforcing its veterans' and tax exemption programs, there is a sufficiently substantive evil to justify regulation. The determination by the state of the existence of such state purpose, and of the attainment of same by the enactments at bar is strongly persuasive. *Garner v. Board of Public Works of Los Angeles, supra.* Cf. *American Communications Assn. v. Douds, supra.*

Active allegiance to and participation in the defense of this Nation can be affirmatively encouraged by states.

*In re Summers*, 325 U.S. 561;

*Hamilton v. University of California*, 293 U.S. 245.

In view of such circumstances this lesser regulation is fully appropriate in relation to the state program involved.

The state requirement of an oath of non-advocacy of forcible overthrow does not violate procedural due process. The declaration requirement at bar is not void for vagueness since its language has been explicitly construed by Federal and state court decisions and gives fair notice of its application.

*Dennis v. United States*, *supra*;

*United States v. Harriss*, 347 U.S. 612;

*Beauharnais v. Illinois*, *supra*.

Nor does the declaration, in touching only *present* conduct, constitute a so-called test oath.

*Garner v. Board of Public Works*, *supra*.

The oath does not deny equal protection since the state has the power to classify in the determination of objects for its tax laws, for exemptions therefrom and for procedures for qualifying for same.

*Leigh v. Green*, 193 U.S. 79;

*U. S. v. Petrillo*, 332 U.S. 1;

*U. S. v. Burnison*, 339 U.S. 87.

Moreover, supposed defects as to the application of these enactments to other classes of taxpayers, i.e.,



aliens, are not available to appellants either under the Federal Constitution or state law.

*Bode v. Barrett*, 344 U.S. 583;

*U. S. v. Petrillo*, *supra*.

The doctrine of supersession of state enactments by Federal law cannot properly be asserted in this case. *Pennsylvania v. Nelson*, 350 U.S. 497, merely dealt with the occupation of the field of subversion by the Federal government in regard to criminal prosecutions for sedition. In the absence of any expression of Congressional intent so as to supersede state regulations prescribing loyalty declaration requirements for valid state civil purposes, such as tax exemptions, application of the doctrine of supersession would raise grave constitutional questions.

*Bernhardt v. Polygraphic Co.*, 350 U.S. 198, 202.

No evidence exists in the present case of the need for centralization in the Federal Government of administration of state programs requiring establishment of non-advocacy of violent overthrow in connection with valid state purposes and the conduct of state government. *Clark v. Allen*, 331 U.S. 503, 516-517.

In the absence of any "parallel" Federal regulation concerning conditions of qualification for state office, employment or tax exemption, and in the absence of any expression of a purpose to supersede such regulations, the state enactments at bar are presently valid and enforceable.

*Davis v. Beason*, 133 U.S. 333;

*California v. Zook*, 336 U.S. 725;

*Clark v. Allen*, *supra*.

## ARGUMENT.

### I.

**A LEGISLATIVE DETERMINATION THAT CERTAIN CONDUCT, EVEN THOUGH CAST IN THE FORM OF SPEECH, IS SUBJECT TO REGULATION IS ENTITLED TO BE GIVEN SERIOUS CONSIDERATION.**

Respondents agree with appellants that any regulation in the area of basic constitutional guarantees is subject to close scrutiny. To state, however, as do appellants that laws which "infringe" on First Amendment freedoms are not protected by a presumption of constitutionality is to beg the entire question. Moreover, appellants ignore recent case authority according substantial weight to the legislative intendment in cases involving basic civil and political as well as economic liberties. As was stated by the majority of the United States Supreme Court in upholding the validity of the anti-Communist affidavit requirement for labor leaders in *American Communications Association v. Douds*, *supra*, 339 U.S. at 401, "(E)ven restrictions on particular kinds of utterances, if enacted by a legislature after appraisal of the need, come to this Court 'encased in the armor wrought by prior legislative deliberation' ". See: *Dennis v. United States*, *supra*, 341 U.S. at 506.

In the most recent case involving this question, this Court, in *Ullmann v. United States*, *supra*, 350 U.S. at 428, held, with Justice Reed dissenting on this point, that "no constitutional guarantee enjoys preference." Such a conclusion supports our contention that each such case must be examined on its own facts, without regard to the fiction of presumption, but with regard

both to the just claims of the minority to a sphere of immunity from regulation of basic constitutional rights and to the rights of the majority to the protection of the system of government under which substantial rights of the minority as well as of the majority are secured. Thus, a determination by two different legislatures, both as to the constitutional provision and the statute, and by the vote of the people in approving the former is entitled to great weight in so far as it says that governmental employment and fiscal privileges shall be denied to those who by their speech incite forcible overthrow of the government. See *American Communications Association v. Douds*, *supra*.

Since the declaration of non-advocacy, which is here in issue, has been determined by the Supreme Court of the State of California to serve an important public purpose in relation to the veteran's exemption and the encouragement of patriotism, which that exemption is designed to stimulate, it is not appropriate for appellants to seek to controvert that purpose. The State Constitutional Amendment and Statute here in question must be accepted as expressions of a serious State purpose, and neither the motivation which prompted them, nor the effectiveness which they may have had are now properly open to question, except on establishment of the absence of any rational connection between the restriction imposed and the purpose to be served.

*American Communications Association v. Douds*,  
*supra*, 339 U.S. at 400;

*Dennis v. United States*, *supra*, 341 U.S. at 506.

As we shall show, the legislation, as interpreted by the California Supreme Court, evidences such rational connection.

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## II.

### **THE OATH REQUIREMENT IS A VALID RESTRAINT UPON THAT SPEECH AMOUNTING TO ADVOCACY OF OVERTHROW OF THE GOVERNMENT BY UNLAWFUL MEANS.**

The oath reads: "I do not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means, nor advocate the support of a foreign government against the United States in event of hostilities." (R. 43.) The key word in the oath is "advocate". It has been defined to have the meaning: "To speak in favor of; defend by argument, one who espouses, defends or vindicates any cause by argument; a pleader, upholder, as an advocate of the oppressed". *Ex parte Bernat*, 255 Fed. 429, 432.

The loyalty declaration requirement in question is a regulation of conduct and has nothing to do with the private beliefs of any person. In fact, it is misleading to refer to the declaration at bar as being a "loyalty" oath at all. There is no attempt at bar to probe matters of belief or conscience; loyalty is treated only as the end sought to be promoted, not as a subjective state of mind to be inquired into. Necessarily, the type of conduct to which such regulation is designed to apply admittedly is speech; however, as we shall show, conduct in the form of speech

of such negative value is not for that reason immune from regulation for a proper interest. "Speech is not an absolute, above and beyond control by the legislature when its judgment, subject to review here, is that certain kinds of speech are so undesirable as to warrant criminal sanction." *Dennis v. United States*, *supra*, 341 U.S. at 508; also see at 502 ("The very language of the Smith Act negates the interpretation which petitioners would have us impose on that Act. It is directed at advocacy, not discussion.")

In contending that this form of oath transgresses the rule of *Yates v. United States*, *supra*, that advocacy of ideas as distinguished from action may not be inhibited, appellants make a fundamental error. Appellants fail to recognize that the effect of the particular regulation on speech must be measured by the effect of the language of the oath, *as properly interpreted*.

In the *Yates* case, this Court held that the broad language of the Smith Act (recodified as 18 U.S.C. § 2385, 62 Stat. 808), which covers not only advocating, but also abetting, advising and teaching the "duty, necessity, desirability or propriety" of forcible overthrow would be interpreted to be limited to "advocacy directed at promoting unlawful action" so as to avoid constitutional questions:

"We are thus faced with the question whether the Smith Act prohibits advocacy and teaching of forcible overthrow as an abstract principle, divorced from any effort to instigate action to that end, so long as such advocacy or teaching is engaged in with evil intent. We hold that it does not . . .

"We need not, however, decide the issue before us in terms of constitutional compulsion, for our first duty is to construe this statute. In doing so we should not assume that Congress chose to disregard a constitutional danger zone so clearly marked, or that it used the words 'advocate' and 'teach' in their ordinary dictionary meanings when they had already been construed as terms of art carrying a special and limited connotation. . . . The statute was aimed at the advocacy and teaching of concrete action for the forcible overthrow of the Government, and not of principles divorced from action."

354 U.S. at 318-320.

Further, the opinion held that a purpose to cause others to engage in resistance to the government "perhaps during war or during attack upon the United States from without" would be covered by the statute and stated:

"It is not necessary for conviction here that advocacy of 'present violent action' be proved."

354 U.S. at 337.

The opinion of the California Supreme Court in the companion case of *First Unitarian Church of Los Angeles v. County of Los Angeles* is in full compliance with the mandate of this Court in the *Yates* case. The California opinion (R. 47, *Unitarian Church* case) states that the oath requirement "is not a limitation on mere belief but is a limitation on action—the advocacy of certain prescribed conduct." The state opinion significantly adds, "Advocacy constitutes action and the instigation of action, not mere



belief or opinion." Further in the opinion (Id., R. p. 53), the California Supreme Court, in a discussion of *Dennis v. United States*, *supra*, directly defined and thus limited the oath requirement *to only that activity prescribed by the Smith Act* (italics added):

"In that case [*Dennis v. United States*] the court upheld an instruction to the jury that if the defendants actively advocated governmental overthrow by force and violence as speedily as circumstances would permit, then as a 'matter of law . . . there is sufficient danger of a substantive evil that the Congress has a right to prevent to justify the application of the statute under the First Amendment of the Constitution.' *In the present case the constitutional provision is concerned with those who advocate the same prohibited activity.*" (Italics added.)

Also see:

*Gilbert v. Minnesota*, 254 U.S. 325, 333.

Thus the California Supreme Court has placed the same interpretation and the same limitations on the application of the tax exemption qualification requirement as this Court has done in regard to the Smith Act in the *Yates* and *Dennis* cases. See *Garner v. Board of Public Works of Los Angeles*, *supra*, 341 U.S. at 723-724 (oath containing similar wording); *Beauharnais v. Illinois*, *supra*, 343 U.S. at 253.

The reversal of the judgments of conviction in the *Yates* case was based merely on faulty instruction of the jury and represented an upholding and not a repudiation of the statutory language condemning the proscribed advocacy. Similar or broader language

than that used in the California Constitution and statutory provisions has been consistently upheld by this Court, in criminal prosecutions as well as in oath cases revoking civil benefits as well as conditioning qualification for same.

*Dennis v. United States, supra;*

*American Communications Association v. Douds, supra;*

*Gerende v. Board of Supervisors, supra* (oath form covered "advising" and "teaching", in addition);

*Garner v. Board of Public Works, supra* (similar form);

*Pockman v. Leonard*, 39 Cal. 2d 676, 249 P. 2d 267, appeal dismissed for want of a substantial federal question, 345 U.S. 962;

*Hirschman v. County of Los Angeles*, 39 Cal. 2d 698, 249 P. 2d 287, cert. denied as *Petherbridge v. Los Angeles County*, 345 U.S. 1002;

*Beauharnais v. Illinois, supra;*

*United States v. Harriss*, 347 U.S. 612.

See:

*Cole v. Arkansas*, 338 U.S. 345.

Said cases have all upheld regulations expressly directed to "advocacy" of forcible overthrow.

Such delimitation of the meaning of the statute is also authorized under the rule of *American Communications Association v. Douds, supra*:

"The congressional purpose is therefore served if we construe the clause; 'that he does not believe in, and is not a member of or supports any organ-

ization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods,' to apply to persons and organizations who believe in violent overthrow of the Government as it presently exists under the Constitution as an objective, not merely a prophecy." (339 U.S. at 407.)

Justice Frankfurter, while disagreeing with the oath in question in so far as it expressly sought to elicit matters of belief, nevertheless also observed that an oath could be upheld as restricted to "disavowal . . . of active belief, as a matter of present policy, in the overthrow of the Government of the United States by force." (339 U.S. at 421-422.) The oath in the case at bar does no more than this.

Also see *Fox v. Washington*, 236 U.S. 273, 277, the classic opinion of Justice Holmes, which upheld the statute as construed by the state so as to punish advocacy.

Express answer as to whether a declaration requirement such as that before this court inhibits belief improperly or at all is found in *Garner v. Board of Public Works of Los Angeles*, *supra*, 341 U.S. at 723, 724, where a broader form of oath by affidavit covering the advising and teaching, as well as the advocacy of forcible overthrow and with certain retrospective features was sustained as interpreted. (341 U.S. at 724.)

## III.

**THE "CLEAR AND PRESENT DANGER" RULE DOES NOT  
INVALIDATE THE STATE ENACTMENTS AT BAR.**

Respondents contend that the "clear and present danger" test was never intended to apply to a civil proceeding of a state designed for the determination of the question of qualification for tax-exemption benefits. Cf. *Beauharnais v. Illinois*, *supra*, 343 U.S. at 266. However, even if the test were applicable, which we do not concede, nevertheless the standards of the "clear and present danger" test should be deemed to have been satisfied. (See *infra*, IV (2).) Both of these contentions will be made in this brief.

The "clear and present danger" test has been placed in true perspective by this Court in *American Communications Association v. Douds*, *supra*, 339 U.S. at 397-398, where, in commenting on the rule as enunciated in *Schenck v. United States*, 249 U.S. 47, 52, and interpreted by *Whitney v. California*, Concurring Opinion; 274 U.S. 357 at 372, 377, and *Bridges v. California*, 314 U.S. 252, 263, the Court held that no "absolutist test" is intended.

"But in suggesting that the substantive evil must be serious and substantial, it was never the intention of this Court to lay down an absolutist test measured in terms of danger to the Nation. When the effect of a statute or ordinance upon the exercise of First Amendment freedoms is relatively small and the public interest to be protected is substantial, it is obvious that a rigid test requiring a showing of imminent danger to the security of the Nation is an absurdity. . . ."

Thus, the imminent danger test is a flexible standard—a restriction with a small effect on First Amendment freedoms and with a beneficial public purpose need not be justified by a showing of imminent danger. As the Court itself states, requiring such showing under those circumstances would be an “absurdity.”

The United States Supreme Court has applied the “clear and present danger” test in the fact situation of an actual or impending prosecution for crime or criminal contempt seeking the imposition of a penal sanction against the one accused. Cf. *Beauharnais v. Illinois*, *supra*, 343 U.S. at 266. The *Schenck* case was a prosecution for conspiracy to violate the Espionage Act of 1917 by a publication which, while it criticized conscription, did not advocate insubordination or obstruction to recruiting. The *Whitney* case, with Justices Holmes and Brandeis concurring, affirmed a conviction for organizing and joining the Communist Labor Party of California. *Bridges v. California* involved merely the use of contempt to punish newspapers for comments on pending Court proceedings—no legislation was involved.

There is all the more reason to require a showing of clear and present danger to justify a criminal sanction, since incarceration during trial and imprisonment afterwards constitute a *complete* deprivation of the right of speech—of communication with

one's fellow man. Such a result is the serious effect which calls for the proper application of the doctrine.<sup>1</sup>

While appellant relies on a prior decision of the California Supreme Court in *Danskin v. San Diego Unified School District*, 28 Cal. 2d 536, 171 P. 2d 885, it will at once be noted that *Danskin* was decided four years before the statement of the "clear and present danger" rule by the United States Supreme Court in the *Douids* case. Moreover, as hereafter discussed, the *Danskin* case presents a situation totally dissimilar from that at bar in several basic respects, one of which is that a total prohibition against *all* speech, peaceable discussion as well as advocacy of violence, was contemplated by the regulation prohibiting the use of school auditoriums there invalidated.

There is still another reason why the "clear and present danger" standard need not be applied in the instant case. In the case at bar there is an express legislative determination that speech advocating the

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<sup>1</sup>Edward S. Corwin, leading constitutional authority, in "Bowling Out Clear and Present Danger", 27 Notre Dame Law, 325, 358, stated:

"The outstanding result of the holding, undoubtedly, is that of a declaration of independence by the Court from the tyranny of a phrase. As expounded in the dissenting opinions of Justices Black and Douglas, the 'clear and present danger' formula is a kind of slide rule whereby all cases involving the issue of free speech simply decide themselves automatically. By treating the formula as authorizing it to weigh the substantive good protected by a statute against the 'clear and present danger' requirement, the Court rids itself of this absurd 'heads-off' automatism and converts the rule, for the first time, into a real 'rule of reason.'"



destruction of government will disentitle the speaker to certain tax exemptions. Thus the legislative branch, in this case, the Legislature and the people acting together, has expressly directed its legislation not merely to conduct in general but to speech in particular. In *Gitlow v. New York*, 268 U.S. 652, the Supreme Court upheld a state statute which made it a crime to "advocate . . . the duty, necessity or propriety of overthrowing . . . government by force or violence." The *Gitlow* case was cited and approved in *Dennis v. United States*, *supra*, 341 U.S. at 506, as standing for the proposition that federal constitutional review is different in the case where a state statute deals directly with speech by express regulatory legislation:

"*Gitlow*, however, presented a different question. There a legislature had found that a certain kind of speech was, itself, harmful and unlawful. The constitutionality of such a state statute had to be adjudged by this Court just as it determined the constitutionality of any state statute, namely, whether the statute was 'reasonable'. Since it was entirely reasonable for a state to attempt to protect itself from violent overthrow, the statute was perforce reasonable."

*Dennis v. United States*, *supra*, 341 U.S. at 506.

Thus, operation of the "clear and present danger" rule can properly be confined to situations where speech is not expressly treated by the legislature as creating such danger by the very nature of the utterance. Thus, in the *Schenck* case the legislation in question did not deal in speech terms or find, either

expressly or impliedly, that any speech imperiled any legitimate interest of society. In the *Whitney* case the speech and other conduct involved was ambiguous in its implications. In *Bridges v. California* no legislation at all allowed proscription of speech by a Court under the contempt power. No case involved speech that by its nature, i.e., its incitement of forcible overthrow, precluded any necessity for inquiry into the intent behind its utterance or the evil purpose sought thereby.

The Supreme Court itself, in the *Dennis* case, 341 U.S. at 505, recognized this very distinction in analyzing the *Schenck* case and similar holdings:

"The rule we deduce from these cases is that where an offense is specified by a statute in non-speech or nonpress terms, a conviction relying upon speech or press as evidence of violation may be sustained only when the speech or publication created a 'clear and present danger' of attempting or accomplishing the prohibited crime, e.g., interference with enlistment. The dissents, we repeat, in emphasizing the value of speech, were addressed to the argument of the sufficiency of the evidence."

The type of speech involved herein, even according to the excerpt from the concurring opinion of Holmes and Brandeis in *Whitney v. California*, *supra*, itself implies a finding of clear and present danger, in compliance with the rule laid down in that opinion that a finding of clear and present danger is supported when "immediate serious violence was to be expected or was advocated, or that the past conduct furnished

reason to believe that such *advocacy* was then contemplated." (274 U.S. at 376.) (Italics added.) As the Supreme Court stated in *Dennis v. United States*, *supra*, 341 U.S. at 509, in upholding Judge Medina's charge to the jury that as a matter of law there was sufficient danger of substantive evil to justify application of the Smith Act, "Certainly an attempt to overthrow the government by force, even though doomed from the outset because of inadequate numbers or power of the revolutionists, is a sufficient evil for Congress to prevent. The damage which such attempts create both physically and politically to a nation makes it impossible to measure the validity in terms of the probability of success, or the immediacy of a successful attempt." (341 U.S. at 509.)

Even the language of *Schneiderman v. United States*, 320 U.S. 118, 157, recognizes this "material difference between agitation and exhortation calling for present violent action which creates a clear and present danger of public disorder or other substantive evil and mere doctrinal justification or prediction of the use of force under hypothetical conditions at some indefinite future time." (Italics added by writer.) This Court held the former type of speech to be properly subject to Congressional control as a bar to naturalization; only said type of speech is here sought to be regulated.

The Supreme Court in the *Dennis* case, 341 U.S. at 502, answered the very argument advanced by appellants here, by holding that the Smith Act in restricting advocacy did not inhibit peaceable discussion:

"The very language of the Smith Act negates the interpretation which petitioners would have us impose on that Act. It is directed at advocacy, not discussion.<sup>o</sup> Thus, the trial judge properly charged the jury that they could not convict if they found that petitioners did 'no more than pursue peaceful studies and discussions or teaching and advocacy in the realm of ideas.' He further charged that it was not unlawful 'to conduct in an American college and university a course explaining the philosophical theories set forth in the books which have been placed in evidence.' Such a charge is in strict accord with the statutory language, and illustrates the meaning to be placed on those words. Congress did not intend to eradicate the free discussion of political theories, to destroy the traditional rights of Americans to discuss and evaluate ideas without fear of governmental sanction. Rather Congress was concerned with the very kind of activity in which the evidence showed these petitioners engaged."

See:

*Harisiades v. Shaughnessy, supra*, 342 U.S. at 592.

Thus, the nature of the speech at bar, advocacy of the forcible overthrow of government, justifies a direct speech regulation narrowly and explicitly drawn to meet the evil inherent in such speech. The clear and present danger rule does not, as we contend, apply to a non-criminal administrative proceeding involving no penal sanction, i.e., the establishment of grounds for qualification for a tax exemption as a special benefit.

While we agree that a village radical in a village square need not be criminally prosecuted for absurd or trivial exhortations, it is quite a different proposition to state that, if his exhortations are seriously intended as advocacy to incite violent overthrow of the government, he ought to be rewarded for his patriotism by being deemed entitled to a special tax benefit given to stimulate and reward patriotism.

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#### IV.

**THERE IS A REASONABLE RELATIONSHIP BETWEEN THE EVIL SOUGHT TO BE CONTROLLED AND A PROPERLY DELIMITED REGULATION OF SPEECH DETERMINED BY THE LEGISLATURE TO BE LEGITIMATELY RELATED TO A PROPER PUBLIC PURPOSE.**

Appellant contends that the *Douds* case, in sustaining the validity of anti-subversive affidavits for labor leaders, carefully limited its holding to the situation where advocates of certain doctrines by reason of their position clearly presented a great danger to the country. But plaintiff has neglected to advert to the language of the *Douds* case which expresses its full holding:

"On the contrary, however, the right of the public to be protected from evils of conduct, even though First Amendment rights of persons or groups are thereby in some manner infringed, has received frequent and consistent recognition by this Court . . . We have never held that such freedoms are absolute. The reason is plain. As Mr. Chief Justice Hughes put it, 'Civil liberties, as guaranteed by the Constitution, imply the

existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses.' *Cox v. New Hampshire*, *supra* (312 U.S. at 574, 85 L. ed. 1052, 61 S. Ct. 762).

"When particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional, partial abridgment of speech, the duty of the courts is to determine which of these two conflicting interests demands the greater protection under the particular circumstances presented. . . .

"On the other hand, legitimate attempts to protect the public, not from the remote possible effects of noxious ideologies, but from present excesses of direct, active conduct are not presumptively bad because they interfere with and, in some of its manifestations, restrain the exercise of First Amendment rights." (339 U.S. at 397-400.)

Cf.

*Beauharnais v. Illinois*, *supra*.

It will be the function of the respondent in this portion of its brief to demonstrate under the rule of the *Doubs* case as set down above, that the present oath is a valid one, since (1) its effect upon First Amendment freedoms is "relatively small" and the public interest to be protected is substantial, in regard to both (2) the substantive evil worked by such speech and (3) the public good which the oath requirement is designed to foster. In thus making the *Doubs* holding our text, we further propose, to the best of our ability, to demonstrate that the oath restriction here



at issue is constitutional under the rule of the very cases on which plaintiff attempts to rely.

**1. The Effect of the Oath Upon First Amendment Freedoms Is Small.**

As stated in the *Douds* case, a sufficient public interest may be favored over an "indirect, conditional, partial abridgment of speech." It is defendant's contention that there is no deprivation of First Amendment rights at all since the only speech that plaintiff need forego under this oath is already subject to restriction.

Has the plaintiff the right to advocate—to urge—the overthrow of the government of the United States and of this state by force, violence or unlawful means? The answer is an unequivocal "No!"

The landmark case of *Dennis v. United States*, 341 U.S. 494, held that advocacy of violent overthrow can be differentiated from peaceable discussion and regulated as such, and that although such advocacy contains elements of speech, nevertheless in the exercise of legislative judgment it is subject to control:

"Speech is not an absolute, above and beyond control by the legislature when its judgment, subject to review here, is that certain kinds of speech are so undesirable as to warrant criminal sanction." 341 U.S. at 508.

In arriving at this conclusion, the Supreme Court approved the holding of *Gillow v. New York*, *supra*, that "it was entirely reasonable for a state to attempt to protect itself from violent overthrow." *Dennis v. United States*, *supra*, 341 U.S. at 506.

The *Dennis* case further held that the Holmes-Brandeis rationale of clear and present danger had to be discarded as an absolute and reinterpreted to cover what was never envisioned by them—"the development of an apparatus designed and dedicated to the overthrow of the Government, in the context of world crisis after crisis." 341 U.S. at 510.

We shall now do what appellants do not do—analyze the specifics of each oath in the cases on which we rely. Such a tabulation bears out our contention that the declaration requirement at bar is not only more limited than the forms of oaths held invalid but is more narrowly delimited than most of those upheld by the case law and is as moderate in its terms as any. In such tabulation it is vital to distinguish clearly oaths of "non-advocacy" from those of "non-belief", "non-membership" and "non-affiliation", particularly to apply to past acts. It is also of importance to determine whether the consequence of failure to take any oath is a deprivation of rights, a revocation of privileges (or benefits) or the mere denial of a qualification for privileges (or benefits). While we agree with appellants' contention that even a privilege cannot be withheld upon an unconstitutional condition, so to state begs the very question to be determined upon examination of the oath at bar. It is our contention that the oath at bar, being merely one of *non-advocacy* of forcible overthrow and being a condition prerequisite to the affirmative duty for qualifying for a special tax benefit, compares favorably with the oaths upheld in the following cases:

## Cases and Citation.

*American Communications Association v. Douds*, *supra*, 339 U.S. 382.

*Gerende v. Board of Supervisors*, 341 U.S. 56, aff'g Court of Appeals of Md. 197 Md. 282, 78 A. 2d 660.

*Shub v. Simpson*, 196 Md. 177, 76 A. 2d 332 (Court of Appeals of Md.), appeal dis. as moot, 340 U.S. 881, after denial of motion to advance hearing to date before election, 340 U.S. 861, 873.

## Form of Oath.

Non-membership and non-affiliation with Communist Party or other organization believing in or teaching violent overthrow; also non-belief (the non-belief provision was upheld by an equally divided court—the former, however, were sustained by five out of the six justices. See *Osman v. Douds*, 339 U.S. 846, where seven out of eight justices sustained former provisions).

Not a “subversive person”—“subversive person” defined as one who commits, attempts, aids, advocates, advises or teaches overthrow, destruction or alteration of the constitutional form of federal or state government by revolution, force, or violence, or who is a member of a “subversive organization”—upheld by United States Supreme Court as a valid regulation banning the candidacy of one “engaged ‘in one way or another in the attempt to overthrow the government by force or violence’” or a member of such an organization with knowledge of its character.<sup>2</sup>

Same oath.

## Effect of Failure to Take Oath.

Deprivation of right to work as labor leader in union in interstate commerce; deprivation of right of union to utilize National Labor Relations Board if it chooses or retains such an officer.

Deprivation of right to be a candidate for or hold public office and of the right of voters to vote for such person.

Same result.

<sup>2</sup>We read the broad language of the Supreme Court that the oath applies to those engaged “in one way or another” in attempted overthrow to cover those who directly advocate such overthrow since, most certainly, they can be considered participants in such an attempt as so defined.

## Cases and Citation.

*Garner v. Board of Public Works*, *supra*, 341 U.S. 716, aff'g 98 Cal. App. 2d 493 (hearing by Calif. Supreme Court den.).

*Pockman v. Leonard*, 39 Cal. 2d 676, appeal dismissed for want of a substantial federal question, 345 U.S. 962.

*Hirschman v. County of Los Angeles*, 39 Cal. 2d 698, cert. denied as *Petherbridge v. Los Angeles County*, 345 U.S. 1002.

*Steiner v. Darby*, 88 Cal. App. 2d 481 (hearing by Calif. Supreme Court den.), cert. granted as *Parker v. County of Los Angeles*, 337 U.S. 929, and dis., 338 U.S. 327, on ground constitutional questions "were not ripe for decision."

*Davis v. Beason*, 133 U.S. 333 (cited with approval in *American Communications Association v. Douds*, *supra*, 339 U.S. at 398)

*In re Summers*, 325 U.S. 561.

*In re Anastaplo* (Supreme Ct., Ill.), 3 Ill. 2d 471, 121 N.E. 2d 826, appeal dis. for want of a substantial federal question and cert. denied, 348 U.S. 946.

## Form of Oath.

Non-advocacy ("do not advise, advocate or teach") of violent overthrow in present and also in past for five years prior to date of city ordinance; non-membership in and non-affiliation with like organization, in present and for the past period.

Non-advocacy of and non-membership in party or organization advocating overthrow of government "by force, violence or other unlawful means;" disclosure of advocacy and membership for past five year period. (Levering Act)

Non-advocacy of and non-membership in any political party or organization advocating overthrow by force or violence.

Same oath.

Non-advocacy of and non-membership in organization advocating bigamy or polygamy.

Oath of allegiance and to support Constitution of state (Illinois).

Oath to support the Constitution of the United States and Constitution of the State of Illinois.

## Effect of Failure to Take Oath.

Loss of right to qualify for elected or appointed office or position; removal of privilege of occupying present office or position. (The 17 nonsigners were discharged from their positions.)

Loss of privilege of teaching in State College together with revocation of permanent teacher's tenure.

Loss of privilege of permanent civil service status and dismissal from county employment.

Fact-finding program upheld as basis for qualification of present and future county officers and employees.

Denial of right to vote in territorial elections.

Denial of privilege of practicing law to conscientious objector on religious grounds, who would not bear arms in defense of state.

Attorney applicant denied privilege of admission to bar on ground he could not take such oath in good conscience when refused to inform bar committee as to membership in subversive organizations and stated belief in forcible overthrow of government.

Although we recognize that constitutional questions are determined more subtly than by mere massing of precedents, we cannot help observing that appellants do not cite one case that holds an oath invalid when same has been based upon a personal pledge of present non-advocacy of forcible overthrow of the government. Appellants cite, as invalidating oath requirements, only *Danskin v. San Diego Unified School District*, *supra*, *Wieman v. Updegraff*, 344 U.S. 183, and the Gwinn Amendment (public housing oath) cases.

The *Danskin* case, to the extent it is not superseded by the decision of the California Supreme Court in these causes, has already been distinguished as inhibiting permissible speech on the part of all members of a collective group—obviously not this situation.

The oath involved in *Wieman* extended to membership without requiring personal knowledge of the character of the subversive organization.<sup>3</sup> But when inquiry has been directed to that membership which is not without such knowledge, such inquiry has been upheld without hesitancy. (*Garner v. Board of Public Works*, 341 U.S. at 723-724; *Steinmetz v. California State Board of Education*, *supra*; *Adler v. Board of Education*, 342 U.S. 485; *Adler v. Wilson*, 203 Misc. 456, 123 N.Y.S. 2d 806 at 810.) In the case at bar, no such issue is presented since this oath does not extend to membership or affiliation; necessarily, knowledge

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<sup>3</sup>The *Wieman* oath required all state officers and employees to swear that they were not "affiliated directly or indirectly" with any organization determined by the Attorney General or other authorized agency of the United States to be a "communist front or subversive organization." 344 U.S. at 186.

of the character of one's own action is to be presumed from the act of his personal advocacy. *Dennis v. United States*, *supra*, 341 U.S. at 499.

Appellants also rely on cases concerning the Gwinn Amendment. (66 Stat. 403, 42 U.S.C. §1411c.) These cases involved declaration requirements which broadly intruded into the field of an individual's membership and affiliation in prescribed organizations.

See:

*Rudder v. United States*, 226 F. 2d 51, 53, 54;  
*Kutcher v. Housing Authority of Newark*, 20  
 N.J. 181, 119 A. 2d 1, at 4;

*Chicago Housing Authority v. Blackman*, 4 Ill.  
 2d 319, 122 N.E. 2d 522;

*Lawson v. Housing Authority of Milwaukee*,  
 270 Wis. 269, 70 N.W. 2d 605, cert. den. 350  
 U.S. 882;

*Housing Authority of Los Angeles v. Cordova*,  
 130 Cal. App. 2d Supp. 883, 884, cert. den.  
 350 U.S. 969.

Not only did these cases involve a different public purpose that was clearly expressed in the Federal statutes concerned, but the *Rudder*, *Cordova* and *Kutcher* cases all expressly make an exception of situations where tenants of Housing Projects are sought to be evicted because engaged in advocating violent overthrow or subversion.

Moreover, appellants ignore the large body of state authority which by forms of oath and regulations analogous to that at bar, have upheld renunciation of present advocacy of destruction of the Government



as a condition to the receipt of appropriate civil benefits, as related to the particular state policy thereby determined.

*Huntamer v. Coe*, (Supreme Court, Washington), 40 Wash. 2d 767, 246 P. 2d 489 (oath—elected officials);

*Fitzgerald v. City of Philadelphia* (Supreme Court, Pa.) 376 Pa. 379, 102 A. 2d 887 (oath—dismissal of staff nurse in city hospital);

*Pickus v. Board of Education of the City of Chicago* (Supreme Court, Illinois), 9 Ill. 2d 599, 138 N.E. 2d 532 (oath—dismissal of teacher);

*State v. Diez* (Supreme Court, Fla.) 97 So. 2d 105 (oath requirement held valid for employment with state racing commission);

*Communist Party v. Peek*, 20 Cal. 2d 536, 127 P. 2d 889 (denial of participation in primary election to party advocating or teaching forcible overthrow);

*Steinmetz v. Board of Education*, 44 Cal. 2d 816, 285 P. 2d 617, cert. den. 351 U.S. 915 (dismissal of state college professor for failure to answer before Board re subversive affiliations);

*Board of Education v. Cooper*, (District Court of Appeal, California) 136 Cal. App. 2d 513, 289 P. 2d 80 (dismissal of teacher—failure to reply as to “present personal advocacy”);

*Appeal of Albert* (Supreme Court, Pa.) 372 Pa. 13, 92 A. 2d 663 (dismissal of teacher involved in advocacy and subversion);

*Milasinovich v. Serbian Progressive Club* (Supreme Court, Pa.), 369 Pa. 26, 84 A. 2d 571 (corporate charter revoked for advocacy of overthrow of government);

*Davis v. University of Kansas*, 129 F. Supp. 716, 718 (dismissal of professor for failure to answer as to subversive affiliation and activity);

*In re Anastaplo, supra*, appeal dis. for want of a substantial federal question, *supra* (denial of admission to bar applicant who refused to answer as to affiliations and stated belief in forcible overthrow);

Cf. *Konigsberg v. State Bar of California*, 353 U.S. 252, at 271 (where it was expressly determined that the bar applicant not only did not and had not advocated violent overthrow but had testified under oath to and previously stated disavowal of and active opposition to advocacy of force and violence.)

Appellants' references to other free speech cases do not assist them since such cases, like those above, concerned the indiscriminate imposition of regulations interfering with *peaceable* speech, assembly or religious activity. Thus in *Thornhill v. Alabama*, 310 U.S. 88, the ordinance forbade peaceful as well as violent picketing; in *Thomas v. Collins*, 323 U.S. 516, registration was required of a union organizer for peaceable solicitation; in *De Jonge v. Oregon*, 299 U.S. 353, peaceable assembly for a lawful purpose as a forum for permissible speech was arbitrarily precluded;

*West Virginia State Board of Education v. Barnette*, 319 U.S. 624, involved the invalidity of requiring a flag salute as a prerequisite to school attendance—an affirmative act the failure to perform which involved no such consequences to the security of our government as the anti-social conduct with which we are concerned at bar; and *Hannegan v. Esquire, Inc.*, 327 U.S. 146, involved no more than the usurpation of administrative authority to classify and cut off the communication of speech. We have no quarrel with the importance or validity of these holdings, except to say that none apply here.

It would be a great disservice to the legitimate protection of American civil liberties to fail to delineate between prohibitions of legitimate speech and regulation, such as that now at bar, which is directed specifically to that very type of speech which is properly subject to state control. Any long-range protection of American civil liberties must draw a line which recognizes the propriety of regulation in those limited situations where regulation is permissible, as by the requirement of a narrowly drawn form of oath and affirmation applied only to the receipt of special civil benefits by those who would otherwise be deemed inappropriate to receive them. On this basis, there can be no denial of free speech to a veteran who fails to qualify for a special benefit in the form of tax exemption by failure to subscribe an oath or affirmation that he is not advocating violent overthrow of government, which has provided the subsidy as a reward for that very patriotism which the recipient chooses to abnegate. As so drawn, such requirement

is not directed to any mere discussion or criticism of government but is directed solely to that present advocacy of its forcible overthrow which has been held a proper subject of state regulation.

2. **The Speech to Be Regulated Works a Clear and Present Danger of Substantive Evil.**

We shall next show the extent of the evil and the substantiality of the public interest protected therefrom. We are in frank disagreement with appellants' statements (Brief, p. 43) that the present situation presents so insubstantial a public interest as to be outside the scope of the *Douss* rule. If the public interest here, by reason of the limited application of the veterans' property tax exemption, is less vital than the protection of interstate commerce, which we would by no means concede, so much more limited also is the effect of this oath. Whereas in the *Douss* case (and others we have cited), those affected were deprived of their very livelihood and organizations were deprived of their leaders, if the latter were not indeed criminally convicted and incarcerated, as in the *Dennis* case, the present oath works only as the qualification for a tax advantage and in doing so affects only that small area of speech which incites violence dedicated to the overthrow of our government. In determining under the *Douss* rule whether this "indirect, conditional, partial abridgment of speech" is valid, appellants totally ignore the above factors which must be considered in balancing the value of the speech against the importance of the interests which we are now to discuss.

Although respondents have contended that there is no need for a showing of clear and present danger to justify the limited non-penal standard of qualification for benefits at issue, it is also their position, in the alternative, that there is sufficient support for the legislative determination of existence of the requisite peril to a protectible interest of society. In making such contention, we do not intend to abandon our prior position, in part III of this brief, that clear and present danger is not the proper test to be applied to a non-penal regulation of criminal incitement.

Contrary to the appellants' assertion, there is no requirement that the legislature hold hearings or make findings therefrom as the prerequisite to valid legislation. When members of the general public, even those with special interests (i.e., property owners) are to be affected by general legislation, they need not be given a hearing for they are presumed to have been heard through their representatives in the legislature.

*Bi-Metallic Invest. Co. v. State Board of Equalization*, 239 U.S. 411;

*In re Orosi Public Utility District*, 196 Cal. 43, 50.

There need be no long recital of those facts which render the present time of peace as dangerous, if not more dangerous, to the civil liberties of this nation than most if not all the wars of our past history.\* As this court stated in discussing the views of Justices Holmes and Brandeis in the *Gitlow* case, "they were

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\*As J. Edgar Hoover has stated: "Never has there been a time when we have so much need for one another." *Masters of Deceit* (Henry Holt & Co., 1958) Foreword, p. viii.

not confronted with any situation comparable to the instant one—the development of an apparatus designed and dedicated to the overthrow of the Government in the context of world crisis after crisis.”

*Dennis v. U.S.*, *supra*, 341 U.S. at 510.

Also see:

*Harisiades v. Shaughnessy*, *supra*.

That Communism presents the requisite clear and present danger of imminent substantial evil has been established by and in a manner satisfactory to the courts. In *Dennis v. United States*, *supra*, Judge Medina's charge to the jury that the Communists' violation of the Smith Act offered sufficient danger of a substantive evil that the Congress had a right to prevent was upheld as being a proper subject of judicial notice; in his concurring opinion in the *Douds* case Justice Jackson elaborated at length upon the discipline and undeviating nature of the Communist conspiracy. (339 U.S. at 422-433.)

Further, since a legislative declaration may be of aid in confirming the legitimate purpose of such legislation and is deserving of judicial deference in preserving the policy so implemented (*American Communications Assoc. v. Douds*, *supra*) the following California and federal statutes should be noted as finding the requisite danger in advocacy of the violent overthrow of the government and support of its enemies:

1. Government Code Section 1027.5—a complete finding of objectives and tactics, concluding that



"There is a clear and present danger, which the Legislature of the State of California finds is great and imminent, that in order to advance the program, policies and objectives of the world communism movement, communist organizations in the State of California and their members will engage in concerted effort to hamper, restrict, interfere with, impede, or nullify the efforts of the State and the public agencies of the State to comply with and enforce the laws of the State of California . . ."

Also see Government Code § 1028 (covering advocacy of violent overthrow along with membership in Communist Party or other organization which advocates violent overthrow as a sufficient cause for dismissal of public employees) and see Education Code § 8275 (defining Communism as a theory for forcible overthrow and prohibiting advocacy in public schools).

2. The Subversive Organization Registration Law, Cal. Corp. Code §§ 35000-35302, particularly section 35001.

3. The Internal Security Act of 1950 (federal), Sept. 23, 1950, c. 1024, Title I, sec. 2; 64 Stat. 987, 50 U.S.C. sec. 781. (See *Galvan v. Press*, 347 U.S. 522, 529, reading the findings of the Internal Security Act of 1950 into the Immigration and Nationality Act.)

4. The Communist Control Act of 1954 (also federal), Aug. 24, 1954, c. 886, 68 Stat. 775.

5. Also see the Smith Act, *supra*.

6. 67 Stat. 134, 18 U.S.C. § 2391 (June 30, 1953), (extending effect of federal sedition statute beyond wartime).

Respondents in this case do not for one moment contend or admit that the oath required under Section 32 of the Revenue & Taxation Code applies only to persons formally connected with the Communist conspiracy. It is our purpose in this discussion to show that that conspiracy has been found to constitute *attempted* overthrow (see *Dennis v. United States, supra*) or other harmful subversive activity a real and substantial danger. It is not that our basic freedoms rate any lower in the scale of values; it is that our security must need occupy a relatively higher place on that scale than heretofore. *American Communications Association v. Douds, supra*, at 394; *Dennis v. United States, supra*, 341 U.S. at 510; *Steinmetz v. California State Board of Education, supra*, (distinguishing *Communist Party v. Peek*, 20 Cal. 2d 536, 127 P. 2d 889, in reference to recognition of the subversive character of the Communist Party "under the conditions then existing"):

### 3. The Oath Protects a Substantial Public Interest.

Plaintiff, however, makes inquiry as to how or in what manner the security of the nation will be aided by picking out veterans as a class and imposing on them prerequisites for certain benefits. There are two answers to this query.

The first is that veterans are citizens and that it is the duty of every citizen to refrain from criminal and

disloyal acts bordering on treason.<sup>5</sup> As citizens applying for special benefits above and beyond those available to the mass of the citizenry, veterans can be properly required and should rejoice in the opportunity to state that they are not attempting to destroy the nation for which they once fought.

Another important function of a declaration of this kind is in securing information as to those who may be subversive. Such information, it must be conceded, is of value in enabling the Legislature to observe the workings of the tax exemption program, as an instrument for the inculcation of patriotism and as part of the state program against violent subversion. Such information is as relevant for such state purposes as similar information which can be secured from public employees.

See: *Board of Education v. Eisenberg*, 129 Cal. App. 2d at 732, 742, 277 P. 2d 943, at 950, quoting from *United States v. Josephson*, 165 F. 2d 82, 333 U.S. 838:

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<sup>5</sup>Even the Federal Government deems continued loyalty relevant to the receipt of those veterans' benefits granted by it:

57 Stat. 555, 38 U.S.C.A. §728 (enacted July 13, 1943):

"Any person shown by evidence satisfactory to the Administrator of Veterans' Affairs to be guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or of its allies shall forfeit all accrued or future benefits under laws administered by the Veterans' Administration pertaining to gratuities for veterans and their dependents. Provided, however, That the Administrator of Veterans' Affairs, in his discretion, may apportion and pay any part of such benefits to the dependents of such person not exceeding the amount to which each dependent would be entitled if such person were dead."

“ ‘The power of Congress to gather facts of the most intense public concern, such as these, is not diminished by the unchallenged right of individuals to speak their minds within lawful limits. When speech or propaganda, or whatever it may at the moment be called, clearly presents an immediate danger to national security, the protection of the First Amendment ceases.’ ”

See *Garner v. Board of Public Works*, *supra*, 341 U.S. at 720; *Steinmetz v. California State Board of Education*, *supra*; *Fitzgerald v. City of Philadelphia*, *supra*, 102 A. 2d 887, 890; *Adler v. Wilson*, *supra*, 123 N.Y.S. 2d at 809-810.

Unnecessary attacks against abuses of government power which are not present in this case, should not obscure the fact that patriotism remains a virtue in our society that is not merely to be taken for granted but which is worthy of being affirmatively inculcated.<sup>6</sup> Appellants obscure the fact that proper steps within the permissible scope even of regulation of constitutional rights may be taken to promote patriotism. The possibility of abuses not yet shown is insufficient to vitiate the right of state action validly regulating constitutional rights “While this Court sits”. (*Beauharnais v. Illinois*, *supra*, 343 U.S. at 263. Such possibility does not invalidate the state enactments at bar.

*United States v. Harriss*, *supra*.

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<sup>6</sup> “And we must never forget that if our government is to remain free, it needs the help of every patriotic man, woman and child.” J. Edgar Hoover, *op. cit.*, *supra*, p. viii.

In *Gilbert v. Minnesota*, 254 U.S. 325, cited in *Pennsylvania v. Nelson*, 350 U.S. 499, 500-501, it was clearly held that there is a proper scope for state action which is even pointed directly to the promotion of patriotism.

"... The United States is composed of the states, the states are constituted of the citizens of the United States, who also are citizens of the states, and it is from these citizens that armies are raised and wars waged, and whether to victory and its benefits, or to defeat and its calamities, the states as well as the United States are intimately concerned. And whether to victory or defeat depends upon their morale, the spirit and determination that animates them,—whether it is repellant and adverse or eager and militant,—and to maintain it eager and militant against attempts at its debasements in aid of the enemies of the United States is a service of patriotism, and from the contention that it encroaches upon or usurps any power of Congress, there is an instinctive and immediate revolt."

Cited in the *Gilbert* case is the case of *Halter v. Nebraska*, 205 U.S. 34,

"... To maintain and reverence these, to 'encourage patriotism and love of country among its people,' may be affirmed; it was said, to be a duty that rests upon each state; and that 'when, by its legislation, the state encourages a feeling of patriotism towards the nation, it necessarily encourages a like feeling toward the state.'"

As the *Gilbert* case concluded, a state "has power to regulate the conduct of those citizens, and to re-

strain the exertion of baleful influences against the promptings of patriotic duty, to the detriment of the welfare of the nation and state." (254 U.S. at 331.)

The reason why such an oath can be required of veterans is that it subsidizes those who have set an example of loyal service devoted to the cause of their country. As a subsidy for and tribute to patriotism it may be conditioned to exclude those whose conduct does not comport with standards applicable to all citizens similarly situated set by the legislature to discourage conduct seeking the overthrow of the government. It is not a valid argument to rely upon the Supreme Court cases dealing with oath requirements for public officers and employees and labor union officials and to state that these exhaust the legislative power to provide such safeguards. Indeed, just because respondents have a quarrel with the wisdom of the particular oath requirement there is no reason to ignore the determination of the legislature and the people that a serious evil would be combated by such measure. No other body is in a position to substitute its judgment as to the "necessity or desirability" of the statute for that of the state as the legislating power.

*American Communications Association v. Douds*,  
*supra*, 339 U.S. at 400-401.

The Supreme Court of California in its opinion in the cases at bar clearly related the loyalty declaration requirement here at issue to the importance to the state purpose of patriotism which is served. Also see *Veterans Welfare Board v. Riley*, 188 Cal. 607,



206 Pac. 631; *Allied Architects' Assn. v. Payne*, 192 Cal. 431, 221 Pac. 209.

Nor is it an argument against the oath that it is useless because it may be violated. Just because some might be reprehensible enough to take the oath and the benefit and at the same time to work the destruction of their benefactor is no reason to doubt the legislative judgment, even were legislative wisdom subject to attack, which it is not.

Nor can appellant complain of the limited impact of the program as covering only those veterans with property less than the maximum allowed by the exemption, since it is the *subsidizing* of active subversion by the state that is the evil sought to be met by the legislation. *Hamilton v. University of California*, 293 U.S. 245, upheld the requirement of military training for pacifist students in land grant colleges on the ground that benefits could be reasonably conditioned on training for patriotic service, despite contention that freedom of religion was thereby violated. In concurring in the main opinion, Justices Cardozo, Brandeis and Stone said of these students:

"If they elect to resort to an institution for higher education maintained with the state's moneys, then and only then they are commanded to follow courses of instruction believed by the state to be vital to its welfare." 293 U.S. at 266.

Indeed, it may well be asked if active military training can be required of a pacifist as a condition of receiving a state-financed education (*Hamilton v. University of California, supra*) and if the obligation of

bearing arms for a state can be imposed as a condition for admission to the bar (*In re Summers, supra*), why the much less rigorous condition of refraining from incitement of forcible overthrow of the government cannot be demanded by it as a condition to a voluntary tax benefit which it offers for the very patriotic purposes which a seeker of its overthrow would derogate? Indeed, as the very advocate of violent overthrow can be compelled to undergo military training and service as prerequisite to far more valuable benefits, is it any more inconsistent with his supposed ideals<sup>7</sup> to have to refrain from opposing that to which he could otherwise be compelled to give active support. As the Illinois Supreme Court stated in *In re Anastaplo, supra*, 121 N.E. 2d at 832; in discussing the effect of the *Summers* case on this problem:

“We see no substantial difference, or basis for a different application of the limitations on the right of free speech, between an inquiry into Summer’s belief that he would not bear arms in support of his government and an inquiry, where the existence of a clear and present danger is

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<sup>7</sup>Justice Cardozo, in the Concurring Opinion in *Hamilton v. University of California, supra*, stated in regard to such a situation:

“Manifestly a different doctrine would carry us to lengths that have never yet been dreamed of. The conscientious objector, if his liberties were to be thus extended, might refuse to contribute taxes in furtherance of a war, whether for attack or for defense, or in furtherance of any other end condemned by his conscience as irreligious or immoral. The right of private judgment has never yet been so exalted above the powers and the compulsion of the agencies of government. One who is a martyr to a principle—which may turn out in the end to be a delusion or an error—does not prove by his martyrdom that he has kept within the law.” 293 U.S. at 268.

known, directed to petitioner's membership in an organization which advocates the overthrow of the same government by force of arms if necessary. Measured by popular belief and opinion, we think that one who would embrace a movement to overthrow our government by force of arms is relatively more unqualified to fulfill his obligations as a lawyer than is a person who, because of conscientious scruples, would not use force of arms to prevent wrong. The latter admits of some loyalty to his government, the former none."

See *American Communications Assn. v. Douds*, 339 U.S. at 405 (approving and applying *Summers* holding).

Appellants strive to broaden the present controversy to extend to categories of persons and entities not involved in this law suit. They seek to extend this controversy to those who have not challenged the tax provisions here in question and to whom the tax provisions have not been shown to have been applied. In seeking to involve growing crops, fruit, and nut-bearing trees, and cemeteries, as well as income tax and other personal exemptions in this litigation, appellants ignore well-established rules of tax litigation and of constitutional adjudication.

In the first place they ignore the clear provisions of California Revenue and Taxation Code Section 26:

"If any provision of this code, or its application to any person or circumstance, is held invalid, the remainder of the Code, or the application of the provision to other persons or circumstances, is not affected."

The doctrine of severability, particularly as to provisions not yet applied, is of course recognizable in federal as well as state law. See *United States v. Harriss*, *supra*, 347 U.S. at 627.

Further ignored is applicable state law that a challenge to a tax measure may only be made by the person to whom the particular tax is applied, and under the particular section of the law under which the tax is imposed.

*County of Los Angeles v. Eikenberry*, 131 Cal. 461, 63 Pac. 766;

*People v. Globe Grain & Mill. Co.*, 211 Cal. 121, 294 Pac. 3;

*In re Halck*, 215 Cal. 500, 11 P.2d 389;

*Platt v. Philbrick*, 8 Cal.App. 2d 27, 47 P. 2d 302;

*In re Durand*, 6 Cal.App. 2d 69, 44 P. 2d 367.

In view of the fact that the particular property tax involved is governed by California Revenue and Taxation Code Section 32 unlike many of the other California taxes cited by appellants, and for the reason that those challenging the oath in this case are veterans claiming under a specific constitutional provision awarding the so-called "Veteran's Exemption," other real or imagined applications of the tax law were not before the California Supreme Court. Moreover, in view of the code section above cited, it is our contention that under state law each application of the anti-advocacy requirement of the California Constitution, whether by oath or by some other means not presented in the case at bar, must be tested separately

according to its own particular facts, particularly "when the statute, has not been, and might never be, applied in such manner as to raise the question".

*United States v. Petrillo, supra*, 332 U.S. at 11.

As this Court has long held, it will not decide constitutional matters in the absence of the necessity for the same, or on hypothetical facts.

*Peters v. Hobby*, 349 U.S. 331, 338.

As this Court further stated in *Rescue Army v. Municipal Court*, 331 U.S. 549, 569, constitutional questions will not be determined "in broader terms than are required by the precise facts to which the ruling is to be applied" or "at the insistence of one who fails to show that he is injured by the statute's operation." Also see *United States v. Petrillo, supra*; *Alabama State Federation of Labor v. McAdory*, 325 U.S. 450. In the case at bar, appellants are in nowise injured by any application of the constitutional provisions or statute in question to other taxpayers.

## V.

### THE TERMS OF THE CONSTITUTIONAL AMENDMENT AND OATH FURNISH A DEFINITE STANDARD SATISFYING IN ALL RESPECTS THE DEMANDS OF DUE PROCESS.

#### A. The Declaration Requirement Is Not Void for Vagueness.

Appellants claim the provision and oath requirements are void for vagueness and permit doubt as to whether an applicant should subscribe to the oath and as to whether a person would be sufficiently

protected in the event of criminal prosecution for improperly taking such oath.

The following authorities unequivocally support the wording of this oath as being sufficient notice of the conduct proscribed:

*Dennis v. United States, supra*, 341 U.S. at 515, answered such contention:

"This argument is particularly nonpersuasive when presented by petitioners, who, the jury found, intended to overthrow the Government as speedily as circumstances would permit. . . .

"... Where there is doubt as to the intent of the defendants, the nature of their activities, or their power to bring about the evil, this Court will review the convictions with the scrupulous care demanded by our Constitution. But we are not convinced that because there may be borderline cases at some time in the future, these convictions should be reversed because of the argument that these petitioners could not know that their activities were constitutionally proscribed by the statute."

Accord:

*American Communications Association v. Douds, supra*, 339 U.S. at 412-413 (oath upheld except as to provisions concerning belief);

*Adler v. Board of Education, supra*, 342 U.S. at 496 ("subversive" sufficiently defined as advocacy of forcible overthrow);

*Pockman v. Leonard, supra* (upholding similar oath—advocacy or membership in organiza-



tion advocating overthrow "by force or violence or other unlawful means" (italics added));

*Hirschman v. County of Los Angeles, supra;*

*Fitzgerald v. City of Philadelphia, supra*, 376

Pa. 379, 102 A. 2d 887, see at 890.

Also see:

*Whitney v. California, supra*, 274 U.S. at p. 366;

*Shub v. Simpson*, 196 Md. 177, 76 A. 2d 332, 337-338.

Likewise the argument of appellants as to the invalidity of that part of the oath involving present advocacy of the support of a foreign government in a future war also falls under the above cases.

We contend that advocacy, as an accepted concept of action by the way of support of a foreign government in the future contingency of war between it and the United States, is subject to regulation as a form of advocacy of forcible overthrow. See *Dennis v. United States, supra*, and *Yates v. United States, supra*, 354 U.S. at 320, that advocacy of "future violent action" is enough.

The California Supreme Court similarly held that such conduct would frustrate the state's program of tax exemption. It is noteworthy that even the privileges of law practice and of a university education have been denied for failure to take an oath of allegiance and support of federal and state governments and to engage in compulsory military training.

*In re Summers, supra.*

Also see:

*In re Anastaplo* (Supreme Court, Illinois),  
*supra* (appeal dismissed for want of a sub-  
 stantial federal question and cert. den., 348  
 U.S. 946);

*Hamilton v. Regents of the University of Cali-  
 fornia, supra.*

Likewise, when appellants contend that the lan-  
 guage dealing with support of a foreign government,  
 is judicially unconstrued, they ignore those authorities  
 which upheld Section 3 of the Espionage Act of 1917  
 (Act of June 15, 1917, c. 30, 40 Stat. 217, as amended  
 by Act May 16, 1918, c. 75, §1, 40 Stat. 553) which  
 imposed penal sanctions on "Whoever shall by word  
 or act support or favor the cause of any country with  
 which the United States is at war, or by word or act  
 oppose the cause of the United States therein. . . ."

*Lockhart v. United States*, 264 Fed. 14, cert.  
 den. 254 U.S. 645;

*Wimmer v. United States*, 264 Fed. 11, cert.  
 den. 253 U.S. 494.

See also, upholding the Espionage Act of 1917, in  
 its entirety:

*Frohwerk v. United States*, 249 U.S. 204;

*Debs v. United States*, 249 U.S. 211;

*Abrams v. United States*, 250 U.S. 616;

*United States v. Burleson*, 255 U.S. 407.

Particularly applicable is *Gilbert v. Minnesota*,  
*supra*, where a state provision that its citizens "not  
 aid or assist in prosecuting or carrying on war with  
 the public enemies of the United States" was upheld.

as a valid state regulation designed to encourage patriotism. 254 U.S. at 327, 330-331.

In a time of present danger as grave as any war in the Nation's history, no distinction can be conceived between a wartime situation and that of the present emergency. Under such circumstances the rule of the *Dennis* case "that advocacy of violent action to be taken at some future time was enough" is applicable to sustain the present oath requirement.

*Dennis v. United States*, *supra*, 341 U.S. at 507.

See:

*Yates v. United States*, *supra* (reaffirming said principle).

Moreover, in view of the fact of prior judicial definition of the words "support" and "hostilities", there can be no just claim that the terms in question are unconstitutionally vague.

*United States v. Schulze*, 253 Fed. 377, 379-380, aff'd as *Schulze v. United States*, 259 Fed. 189 (definition of "support");

*Schoborg v. United States*, 264 Fed. 1, at 5 (same);

*Samuels v. United Seaman's Service, Inc.*, 165 F. 2d 409, 411-412 (definition of hostilities as "open and hostile warfare activity");

*Burger v. Employees' Retirement System*, 101 Cal. App. 2d 700, 702, 226 P. 2d 38 (definition of "hostilities"; accord).

See also:

*Kaiser v. Hopkins*, 6 Cal. 2d 537, 58 P. 2d 1278 (definition of "war" for purpose of veterans' property tax exemption as active conduct of hostilities).

In view of the extensive judicial construction of the terms of this oath requirement, it fully satisfies the criterion of fair notice and escapes the vice of being void for vagueness or of including any type of speech or conduct which is not properly subject to regulation.

*U. S. v. Harriss*, *supra*, 347 U.S. at 617-618;

*Beauharnais v. Illinois*, *supra*, 343 U.S. at 264;

*Cole v. Arkansas*, 338 U.S. 345, 354 (upholding state statute directed against promotion of assemblage to prevent by force or violence a person from engaging in a lawful location);

*U. S. v. Petrillo*, *supra*, 332 U.S. at 7;

*Chaplinsky v. State of New Hampshire*, 315 U.S. 568, 574 ("A statute punishing verbal acts, carefully drawn so as not unduly to impair liberty of expression, is not too vague for a criminal law.");

*U. S. v. Ragen*, 314 U.S. 513, 523;

*Gorin v. U. S.*, 312 U.S. 19, 28.

#### B. The Declaration Requirement Does Not Deny Procedural Due Process.

When appellants contend that Section 32 deprives them of their tax exemption on a fallacious inference, they are guilty of two grave misconceptions.

First, they falsely assume that an oath declaration of non-advocacy cannot be required as proof of the loyalty of a person, who by the status he occupies or claims, has placed himself in a position where he is properly subject to such inquiry. In the second place, appellants misconstrue the burden of proof needed to obtain such privilege; they complain of the inferences drawn against them, in disregard of the necessity that one must prove himself entitled to obtain the exemption by the substantive terms of the Constitution under the procedure outlined in the statute.

The first misconception was dealt with by this Court as to a broader form of oath, in *Garner v. Board of Public Works of Los Angeles*, *supra*, 341 U.S. at 720, where it was held, "The affidavit requirement is valid." As it was stated in *American Communications Assn. v. Douds*, *supra*, 339 U.S. at 414, an oath directed to present and not to past conduct or loyalty is not a religious test oath and the casting of such provision in oath form "hardly rises to the stature of a constitutional question."

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\*See *Huntamer v. Coe*, *supra*, 246 P. 2d at 492, tracing the history of the proper use of oaths of allegiance (in which category it holds a non-advocacy oath to fall) and the abuse of such oaths, which it notes have taken the form of tests of religious belief or of past conduct, usually involving past political beliefs or activities. The Court pointed out that, outside of such abuses,

"Oaths of office and oaths of allegiance have been of tremendous importance in the organization and functioning of society since very ancient times." 246 P. 2d at 492.

Also see:

*Gerende v. Board of Supervisors, supra;*

*Davis v. Beason, supra;*

*Mallinckrodt Chemical Works v. Missouri*,  
238 U.S. 41.

Hence the fact that a declaration by oath or affirmation<sup>9</sup> is utilized as the method of qualification for veterans' tax exemption does not invalidate the qualification requirement; the scope for the employment of a valid state procedure is for the state to determine.

*Alabama State Federation of Labor v. McAdory*,  
325 U.S. 450, 472.

In the second place, appellants assume that they have an automatic right to the privilege, when the truth is that they, as taxpayers under state law, have the affirmative burden of proof, in Court as well as before the Assessor.

*Chesney v. Byram, supra*, 15 Cal. 2d 460, at 465, 101 P. 2d 1106 ("It is obvious that the burden should be upon the person claiming the exemption to establish his right thereto"); *Cal. Revenue and Taxation Code* § 26 (Waiver by failure to follow required procedure).

Thus, it is their burden to show that they are proper persons to qualify under the self-executing constitutional provision for the tax exemption in question—i.e., that they are not persons who advocate the over-

<sup>9</sup>California Revenue and Taxation Code, §17 provides: "Oath includes affirmation." There is an option in California to substitute an affirmation or declaration for an oath. Cal. Code of Civil Procedure §2097.



throw of the government of the United States or the State by force or violence or other unlawful means or who advocate the support of a foreign government against the United States in the event of hostilities. Thus it is of small benefit to appellants to talk of adverse inferences, when the burden is on *them* to produce evidence justifying their claim of exemption. It is not a matter of drawing adverse inferences; it is rather a matter of there being no evidence at all.

This principle is all the more applicable to the initial qualification for a privilege, where, unlike a revocation, the burden of proof is on the person qualifying. See *In re Anastaplo*, *supra*. (Note that this Court dismissed an appeal from this judgment as lacking a substantial federal question, *supra*.)

Insofar as appellants are seeking to infer that the oath requirement is a bill of attainder (such a claim was resolved against appellants by the trial Court and has apparently been abandoned on this appeal), it is hardly necessary to add that *Cummings v. Missouri*, 4 Wall. (U.S.) 277, 18 L.Ed. 356, relied upon by appellants, has repeatedly been distinguished as dealing with legislative revocation of privileges as a punishment for *past acts* committed *before* the effective date of the oath requirement. A host of authorities support this construction of the operation of the Bill of Attainder clause.

*American Communications Association v. Douds*,  
*supra*, 339 U.S. at 413-414;

*Garner v. Board of Public Works*, *supra*, 341  
U.S. at 722;

*Shub v. Simpson*, *supra*.

In this connection we have observed the decision in *Slochower v. New York*, 350 U.S. 551 and note that this Court reaffirmed its earlier holdings in *Adler v. Board of Education, supra*, and *Garner v. Board of Public Works, supra*, in recognizing the right of a city itself through its own governmental agencies to inquire into the qualifications of its own employees and other governmental matters.

See also:

*Steinmetz v. Board of Education, supra.*

In the case at bar, we would observe that it was the consequence of a failure to make the affirmative showing required as a prerequisite to tax exemption before the Assessor, as the very officer charged with administrative and quasi-judicial duties of determining exemptions from county property taxation, that resulted in the denial of the veteran's exemption.

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## VI.

**THE SELECTION BY A STATE OF CERTAIN OBJECTS FOR THE RECEIPT OF A SUBSIDY IN THE FORM OF TAX EXEMPTION DOES NOT CONSTITUTE A DENIAL OF EQUAL PROTECTION AND RAISES NO FEDERAL QUESTION WITHIN THE COGNIZANCE OF THIS COURT.**

The determination by a state of the particular objects worthy to receive tax exemptions and the conditions for qualification for said exemptions are matters properly reserved to the jurisdiction of the

several states. Moreover, appellants seek to overturn the construction given by the California Supreme Court to state law, when they contend that the California Legislature improperly created exceptions to the operation of California constitutional provisions. Such a contention does not present a Federal question. Interpretation by a state of its own statutes as being in harmony with its constitutional provisions presents no question appropriate for adjudication before this Court.

*City of Opelika v. Opelika Sewer Co.*, 265 U.S. 215, 217-218. (Whether ordinance was valid under laws of state belongs to the Supreme Court of the state to decide);

*Waters-Pierce Oil Co. v. Texas*, 212 U.S. 86, 107.

Even were appellants authorized to raise the question of the application of Section 32 of the Revenue and Taxation Code to other taxpayers who are not at bar, it is well established that a state has broad rights of selection and classification in regard to the objects of state taxation.

*Leigh v. Green*, 193 U.S. 79, 86, 89. ("The state has a right to adopt its own method of collecting its taxes, which can only be interfered with by Federal authority when 'necessary for the protection of rights guaranteed by the Federal Constitution.'")

Selecting and classifying objects for the utilization of an oath or affirmation as the means for qualifying for tax exemption is fully within the powers of the

state and such classification would not violate equal protection, particularly where the members of each class are treated equally.

*Skiriotes v. Florida*, 313 U.S. 69, 75;

*Kotch v. Board of River Port Pilot Commissioners*, 330 U.S. 552, 556;

*U. S. v. Petrillo*, *supra*, 332 U.S. at 8;

*Alabama State Federation of Labor v. McAdory*, *supra*, 325 U.S. at 472.

See, particularly,

*Mallinckrodt Chemical Works v. Missouri*, 238 U.S. 41, 55-56 (Upholding selective procedures requiring use of affidavit to qualify for continuation of benefits of incorporation).

Also, see, upholding classifications,

*United States v. Burnison*, 339 U.S. 87, 95;

*International H. Co. v. Missouri*, 234 U.S. 199;

*Rast v. Van Deman & Lewis Co.*, 240 U.S. 342;

*Lake Shore & M.S.R. Co. v. Clough*, 242 U.S. 375;

*State Board v. Jackson*, 283 U.S. 527;

*New York R.T. Co. v. New York City*, 303 U.S. 573.

These arguments dispose of the contentions by appellants as to the exemption of householders and the failure to utilize the oath or affirmation procedure as to other classes of taxpayers. Moreover, due to the fact that other classes of taxpayers are not before this court, and many of said classes would necessarily qualify for tax exemption by means of other procedures, appellants can not properly assert constitu-

tional questions which could only properly be raised by such other taxpayers themselves.

*Bode v. Barrett*, 344 U.S. 583 (Persons not injured by classification not entitled to challenge same);

*Alabama State Federation of Labor v. McAdory*, *supra*, 325 U.S. at 463;

*Skiriotes v. Florida*, *supra*, 313 U.S. 69, 74;

*Standard Stock Food Co. v. Wright*, 225 U.S. 540;

*Mallinckrodt Chemical Works v. Missouri*, *supra*, 238 U.S. 41, 54 ("One who seeks to set aside a state statute as repugnant to the Federal Constitution must show that he is within the class with respect to whom the act is unconstitutional, and that the alleged unconstitutional feature injures him.").

In this connection particularly applicable is the holding of *U. S. v. Petrillo*, *supra*, 332 U.S. at 8, 11, that the prohibitions of a statute restricting First Amendment rights may be applied to a particular class and that hypothetical applications of such statute in other situations will not be considered.

The application of the constitutional provision and the statute on the question of aliens unduly occupies appellants' attention. Not only are there no aliens before this Court, but no allegation of any such discrimination was urged in the lower Courts. In such situation no proper Federal question is raised.

*Edelman v. California*, 344 U.S. 357;

*Alabama State Federation of Labor v. McAdory*, *supra*, 325 U.S. at 472.

In addition, appellants assume that aliens cannot properly be compelled to refrain from advocacy of overthrow of the government by force or violence, and other prejudicial acts. Appellants ignore the obligation of aliens, particularly resident aliens, to maintain a degree of loyalty to this country while living therein, even to the extent of military service. Appellants fail to consider applicable authorities and statutes imposing such obligations on aliens.

*Harisiades v. Shaughnessy*, *supra*, 342 U.S. at 587 (Upholding deportation of aliens for advocacy of forcible overthrow);

*Carlson v. Landon*, 342 U.S. 524, 535 (Noting long-standing statutory provision for deportation of aliens devoted to overthrow of the government by force and violence and extension of the same principle to communists).

See:

*Leonhard v. Eley*, 151 Fed. 2d 409.

The requirement that an alien owes minimum loyalty to this country (to the extent such question is involved in this case) is particularly applicable to any alien who is a veteran of the Armed Forces and who seeks a benefit inspired by and dedicated to that patriotic obligation which military service entails.

See:

*U. S. v. Rumsa*, 212 Fed. 2d 927, 932, Cert. den. 348 U.S. 838 (Military obligation of resident aliens).



## VII.

**CONGRESS HAS NOT INTENDED TO INVALIDATE STATE ENACTMENTS CONCERNING NON-CRIMINAL RESTRICTIONS ON SUBVERSIVE CONDUCT.**

Appellants contend that the doctrine of *Pennsylvania v. Nelson*, 350 U.S. 497, abrogates the power of states to impose regulations of merely a civil nature on those who advocate forcible overthrow of the United States and state governments. So stated appellants' contention would destroy all enactments by the people of the several states designed for the protection of their respective institutions, such as declarations designed to prevent subversives from assuming public office or employment, from becoming teachers and from exercising other privileges and receiving benefits, such as this veterans' tax exemption.

The answer to such contention is plain. Congress has not intended such result, nor could Congress constitutionally effect such result as a legislative body with limited and delegated powers. Directly in point is *Davis v. Beason*, 133 U.S. 333, where this Court held that a federal election qualification statute did not supersede a territorial requirement of qualification by means of an oath covering advocacy of conduct similar to that federally regulated. (See at 348.)

The further answer is that neither did this Court intend such result in any expression made by it in the case of *Pennsylvania v. Nelson*, *supra*.

In the first place the intent of Congress is governing. See: *California v. Zook*, 336 U.S. 725, 733. The fact cannot be denied that *Pennsylvania v. Nelson*,

*supra*, was concerned with the effect of criminal sedition statutes, both Federal and state. A separate question is raised when the contention is made that Federal legislation supersedes state civil regulations. As the opinion of the California Supreme Court (R. 54-56) so clearly states, the only state legislation being considered by this Court is taken to be that limited to the imposition of criminal penalties—i.e., “parallel state legislation.” (350 U.S. at 509.)

Under the tests prescribed by this Court in *Pennsylvania v. Nelson*, the three tests there prescribed for the supersession of state legislation are not met.

*First*, the scheme of Federal regulation is not so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it.

*Parker v. Brown*, 317 U.S. 341.

Congress has not prescribed tests for state office-holding for employment by states or municipalities, for qualification of school teachers, or for the determination of the right of exemption from state and local taxes. Unlike the state “sedition” acts, which were comparable in purpose and scope to Federal criminal legislation, the end result of the above enumerated civil enactments is not punishment but the service of valid state purposes.

*Union Brokerage Co. v. Jensen*, 322 U.S. 202, 207-208, 212.

*Second*, the Federal interest is not so dominant in this field that it would preclude enforcement of state laws since there is no predominant Federal interest in determining the right to state office or employment,

or exemption from state tax laws, absent the violation of specific Federal constitutional guaranties.

*Kotch v. River Port Pilot Commissioners, supra;*

*Michigan Central R. Co. v. Powers*, 201 U.S. 245, 292-293 (no national supervision over state taxation);

*Kirtland v. Hotchkiss*, 100 U.S. 491.

*Third*, there is no danger of conflict between the enforcement of state civil regulations prescribing forbearance of the advocacy of the violent overthrow of government and administration of the Federal Security Program.

*Clark v. Allen*, 331 U.S. 503, 516-517 (upholding state reciprocity as to alien inheritance);

*Hamilton v. Regents, supra*, 293 U.S. at 260.

Unlike the findings discussed in regard to the necessity for centralization of criminal prosecutions for sedition in *Pennsylvania v. Nelson, supra*, no such finding has been made as to any state civil regulations in the fields of combating subversion and determining qualification for state benefits; nor do appellants point to any such finding. Centralization in this field would be both unworkable and undesirable. The interest in *Pennsylvania v. Nelson*, as quoted by the court, was stated to be "that punitive sanctions for sedition against the United States be such as have been promulgated by the central governmental authority and administered under the supervision and review of that authority's judiciary." (350 U.S. at 508.) The limitation to "punitive sanctions" and the reference to

the Federal Judiciary are significant, since while there is Federal *criminal* jurisdiction in the field of subversion, no corresponding civil jurisdiction would exist to entertain the general run of litigation concerning qualification for the privileges of *state* employment and other civil benefits, including those at bar.

Thus, all three tests for Federal supersession fail.

Noteworthy in this respect is the case of *California v. Zook*, 336 U.S. 724, wherein the absence of any "clearly manifested" statutory expression of any such purpose or any other legislative history was held, even in spite of coordinate coverage of Federal and state criminal statutes, to render the doctrine of supersession inoperative, "In which, we would be setting aside great numbers of state statutes to satisfy a congressional purpose which would be only the product of this Court's imagination." (336 U.S. at 732-733.)

Also in the case at bar there is no intent on the part of Congress to *displace* local rules, since, unlike many sedition statutes, state civil loyalty enactments in many cases were enacted *after* the Smith Act. (Cf. *California v. Zook*, *id.* at 735.) Also, "according to familiar principles, Congress having occupied but a limited field, the authority of the state to protect its interests by additional or supplementary legislation otherwise valid, is not impaired."

*Skiriotes v. Florida*, *supra*, 313 U.S. at 75;

*Alabama State Federation of Labor v. McAdory*, *supra*, 325 U.S. at 467.

Also, see:

*Gilbert v. Minnesota, supra*,  
distinguished but not overruled in  
*Pennsylvania v. Nelson*, 350 U.S. at 500-501.

Another important consideration is that Congress could not validly legislate to occupy the field of state taxation and the granting of state tax exemptions. To do so would completely abridge the distinction between the delegated powers of Congress (U. S. Const. Art. I, sec. 8) and the reserved powers of the states (Ninth and Tenth Amendments).

See

*Parker v. Brown*, 317 U.S. 341, 359-360;  
*Bernhardt v. Polygraphic Co.*, 350 U.S. 198,  
202;  
*United States v. Burnison, supra*, 339 U.S. at  
91-92.

Such a result would mean that Congress by the enactment of a criminal statute could terminate all state governmental power and the jurisdiction of all state courts in a particular field; such result would terminate our Federal system of government and would supplant in its stead a unitary national state with mere subordinate administrative units. Obviously, the Federal criminal enactments under consideration should not be interpreted so as to raise any such question.

Further consequence of the abrogation of the doctrine of supersession to the case at bar would be the

enforced reliance on criminal prosecution as virtually the exclusive method of controlling the problem of subversion.<sup>10</sup> Yet, it is well established that criminal prosecution due to its greater burden of proof and other restrictions which attend the imposition of criminal penalties is often insufficient. Even the United States Government itself often resorts to remedial civil actions instead of or even after criminal prosecutions. Cf. *Helvering v. Mitchell*, 303 U.S. 391, 397. To restrict state action to a bare reliance on the results of Federal criminal prosecutions in the Federal Courts would deny to the states that reserve power to take steps for their individual self-interest in a manner never intended by either the Founding Fathers nor the Congresses which enacted the Federal legislation which is asserted to supersede the state legislation at bar. No such construction should be given to the Smith Act and other Federal legislation in question, in the absence of a clear manifestation of Congressional intention.

*Schwartz v. Texas*, 344 U.S. 199;

*Parker v. Brown*, *supra*, 317 U.S. at 351;

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<sup>10</sup>It will be observed that state courts have determined the doctrine of supersession not to govern outside the field of criminal sedition.

*State v. Diez*, Fla., 97 So. 2d 105;

*Wyman v. Uphaus*, N.H., 130 Atl. 2d 278;

*Hahn v. Wyman*, N.H., 123 Atl. 2d 166.

But cf. *Albertson v. Millard*, 345 Mich. 519, 77 N.W. 2d 104 (comprehensive subversive control statute).



*Penn Dairies v. Milk Control Commission*, 318 U.S. 261, 275 (noting a state, unlike Congress, is powerless in the face of an adverse holding on supersession);  
*Connecticut L. & P. Co. v. Power Commission*, 324 U.S. 515, 530.

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### CONCLUSION.

We shall not indulge in those emotional excesses which so often obscure truth, as do appellants when they attempt to label the declaration at bar as a "test oath," which, like so many ready-made labels, fails to fit the article to which it is applied. The test oath of history, unlike the declaration at bar, invaded the realm of private political and religious belief, particularly in deducing guilt from past action. (See: *American Communications Assn. v. Douds*, *supra*.) As we have demonstrated, advocacy of violent overthrow of the government is in a totally different category from any form of "political" activity. See: *Harisiades v. Shaughnessy*, *supra*, 342 U.S. at 592. In the quotation from Chief Justice Hughes in *De Jonge v. Oregon*, 299 U.S. 353, 365, which is relied on by the appellants, it was stated that our basic constitutional rights are designed "to maintain the opportunity for free *political* discussion, to the end that government may be responsive to the will of the people and that

changes, if desired, may be obtained by *peaceful means*". (Italics added.)<sup>11</sup>

Little can be said that is more appropriate on this subject than was stated by this Court in *American Communications Association v. Douds*, *supra*, 339 U.S. at 394:

"Although the First Amendment provides that Congress shall make no law abridging the freedom of speech, press or assembly, it has long been established that those freedoms themselves are dependent upon the power of constitutional government to survive. If it is to survive it must have power to protect itself against unlawful conduct and, under some circumstances, against incitements to commit unlawful acts. Freedom of speech thus does not comprehend the right to speak on any subject at any time."

It would be inconsistent indeed to deny to the several states the right of constitutional amendment and of legislation to protect valid state interests by measures narrowly drawn with regard to the protection of the civil and political rights of Americans. It would be particularly inappropriate to deny state control over a civil benefit which is given for the very patriotic purposes which conditions surrounding same are designed to protect. Under the authorities herein cited, advocacy of violent overthrow or armed hostil-

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<sup>11</sup>Chief Justice Hughes also stated, in the same case, just before the matter quoted:

"These rights may be abused by using speech or press or assembly 'in order to incite to violence and crime. The people through their legislatures may protect themselves against that abuse.'" 299 U.S. at 364.

ity to our government is not so preferred that an advocate must be given a special state tax exemption benefit intended by the state as an incentive to patriotism and as a reward for patriotic service.

We thus respectfully urge that the judgment of the Supreme Court of California be affirmed.

Dated, San Francisco, California,  
March 26, 1958.

**DION R. HOLM,**

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**(Appendix Follows.)**

## Appendix

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### UNITED STATES CONSTITUTION.

#### *Amendment 1.*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

#### *Amendment 14, Section 1.*

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

#### *Article VI.*

(Cl. 2) This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the

Constitution or Laws of any State to the Contrary notwithstanding.

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**STATE CONSTITUTIONAL AND STATUTORY PROVISIONS.**

*California Constitution, Article XIII, Sec. 1 $\frac{1}{4}$ :*

The property to the amount of \$1,000 of every resident of this State who has served in the Army, Navy, Marine Corps, Coast Guard or Revenue Marine (Revenue Cutter) Service of the United States (1) in time of war, or (2) in time of peace, in a campaign or expedition for service in which a medal has been issued by the Congress of the United States, and in either case has received an honorable discharge therefrom, or who after such service of the United States under such conditions has continued in such service, or who in time of war is in such service, or who has been released from active duty because of disability resulting from such service in time of peace or under other honorable conditions, or lacking such amount of property in his own name, so much of the property of the wife of any such person as shall be necessary to equal said amount; and the property to the amount of \$1,000 of the widow resident in this State, or if there be no such widow, of the widowed mother resident in this State, of every person who has so served and has died either during his term of service or after receiving an honorable discharge from said service, or who has been released from active duty because of disability resulting from such service in time of peace or under other honorable conditions, and the prop-

erty to the amount of \$1,000 of pensioned widows, fathers, and mothers, resident in this State, of soldiers, sailors and marines who served in the Army, Navy, Marine Corps, Coast Guard or Revenue Marine (Revenue Cutter) Service of the United States shall be exempt from taxation; provided, this exemption shall not apply to any person named herein owning property of the value of \$5,000 or more, or where the wife of such soldier or sailor owns property of the value of \$5,000 or more. No exemption shall be made under the provisions of this section of the property of a person who is not a legal resident of the State; provided, however, all real property owned by the Ladies of the Grand Army of the Republic and all property owned by the California Soldiers Widows Home Association shall be exempt from taxation.

*California Constitution, Article XX, Section 19:*

Notwithstanding any other provision of the Constitution, no person or organization which advocates the overthrow of the Government of the United States or the State by force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall:

- (a) Hold any office or employment under this State, including but not limited to the University of California, or with any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State; or



(b) Receive any exemption from any tax imposed by this State, or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State.

The Legislature shall enact such laws as may be necessary to enforce the provisions of this section.

*California Revenue and Taxation Code, Section 32:*

(Calif. Stats. 1953, c. 1503, p. 3114, Sec. 1).

Any statement, return, or other documents in which is claimed any exemption, other than the householder's exemption, from any property tax imposed by this State or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State shall contain a declaration that the person or organization making the statement, return, or other document does not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means nor advocate the support of a foreign government against the United States in event of hostilities. If any such statement, return, or other document does not contain such declaration, the person or organization making such statement, return, or other document shall not receive any exemption from the tax to which the statement, return, or other document pertains.

Any person or organization who makes such declaration knowing it to be false is guilty of a felony.

This section shall be construed so as to effectuate the purpose of Section 19 of Article XX of the Constitution.

*Revenue and Taxation Code, § 26:*

If any provision of this code, or its application to any person or circumstance, is held invalid, the remainder of the code, or the application of the provision to other persons or circumstances, is not affected.

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IN THE

**Supreme Court of the United States**

**October Term, 1957**

**Nos. 483, 484**

LAWRENCE SPEISER,

*Appellant,*

vs.

JUSTIN A. RANDALL, as Assessor of Contra  
Costa County, State of California,

*Appellee.*

**No. 483**

DANIEL PRINCE,

*Appellant,*

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation,

*Appellee.*

**No. 484**

**BRIEF OF AMERICAN JEWISH CONGRESS  
AS AMICUS CURIAE**

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<b>DANIEL PRINCE,</b> <i>Appellant,</i> vs. <b>CITY AND COUNTY OF SAN FRANCISCO;</b> <b>a Municipal Corporation,</b> <i>Appellee.</i>	<b>No. 484</b>

**BRIEF OF AMERICAN JEWISH CONGRESS  
AS AMICUS CURIAE**

**Interest of the Amicus**

The American Jewish Congress, a national organization founded in 1918, is a voluntary association of American Jews committed by its constitution to the dual and, for us, inseparable purposes of defending and extending American democracy and preserving our Jewish heritage and its values. The American Jewish Congress has therefore always

been unequivocally opposed to Communism, fascism and all other forms of totalitarianism. We know full well the meaning and nature of Communist tyranny and of its debasing and dehumanizing effects upon all who have been forced to live under its dictates.

We are nevertheless convinced that the threat of totalitarianism cannot be effectively met by adopting the methods of totalitarianism or otherwise compromising our basic freedoms. We are committed to the proposition that the surest way to preserve our nation and our democracy is to guard jealously the liberties secured by our Constitution and Bill of Rights and to oppose any infringements upon those liberties not clearly necessitated by overriding emergencies. Believing that the statute involved in this appeal constitutes an infringement upon American liberties that cannot be justified as clearly necessitated by an overriding emergency, we have sought and obtained the consent of the parties to the submission of this brief *amicus curiae*.

### Statement of the Case

These two cases arise on appeal from a judgment of the Supreme Court of California sustaining the constitutionality of a State constitutional provision barring the grant of tax exemption to persons advocating the overthrow of government and an effectuating statute imposing subscription to a "nonsubversive" oath as a requirement for enjoying tax exemption. The appellants are veterans of World War II and would thus be entitled to certain tax exemption benefits under California law. They were denied these benefits because of their refusal to subscribe to the oath. Except for the fact that the petitioner in *First*

*Unitarian Church v. County of Los Angeles*, October 1957 Term Number 382, is a religious organization accorded tax exemption under a different statute, the facts in these cases are substantially the same as those in the latter case and the opinion of the Supreme Court of California in that case (reported unofficially in 311 P. 2d 508) covers these cases as well.

### **Statutes Involved**

These cases involve the constitutionality of the following provisions of the California constitution and statutes: California Constitution, Article XX, Section 19(b):

“Notwithstanding any other provision of this Constitution, no person or organization which advocates the overthrow of the Government of the United States or the State by force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall:

. . .

“(b) Receive any exemption from any tax imposed by this State or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State.

“The Legislature shall enact such laws as may be necessary to enforce the provisions of this section.”

Revenue & Taxation Code of California, Section 32 (Stats. 1953, c. 1503):

“Any statement, return or other document in which is claimed any exemption, other than the householder's exemption, from any property tax imposed by this State or any county, city or county, city, district,

political subdivision, authority, board, bureau, commission or other public agency of this State shall contain a declaration that the person or organization making the statement, return, or other document does not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means nor advocate the support of a foreign government against the United States in event of hostilities. If any such statement, return, or other document does not contain such a declaration, the person or organization making such statement, return, or other document shall not receive any exemption from the tax to which the statement, return, or other document pertains. Any person or organization who makes such declaration knowing it to be false is guilty of a felony. This section shall be construed so as to effectuate the purpose of Section 19 of Article XX of the Constitution."

### **The Issue to Which This Brief is Addressed**

This brief is addressed to the question whether a government can constitutionally deprive a person of a benefit, accorded to others of the same class, because of his engaging in advocacy of the overthrow of the government by force, violence or other unlawful means, without any showing that such advocacy has the quality of incitement to concrete action.

## **Summary of Argument**

The Constitution recognizes only two classes of expression: that which is permissible and that which may be prohibited. The Constitution does not recognize or sanction a third class of expression which, while it may not be prohibited, may nevertheless be discouraged by withholding from those who engage in it benefits granted to others in the same class.

Under the decisions of this Court culminating in *Yates v. United States*, 354 U. S. 298, it cannot constitutionally be made criminal to "advocate the overthrow of the Government of the United States by force or violence or other unlawful means," where such advocacy has no quality of incitement to concrete action." Since the statute herein does not distinguish between advocacy as an abstract doctrine and advocacy that incites to concrete action, it is unconstitutional.

## **Argument**

**I. Expression that may not constitutionally be prohibited may not be discouraged through the withholding of benefits granted to others in the same class.**

### **A. Government May Not Purchase Silence.**

We submit that where expression on a matter of public interest is involved, neither a State nor the Federal government can constitutionally buy silence. The State may not determine that specific forms of expression, while constitutionally protected, shall be discouraged by calculated manipulation of state-conferred benefits. To do so, the

state must first "prescribe what shall be orthodox," a step that is condemned by the whole tenor of the Constitution. *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, 642. Hence, it is not surprising that any measure that violates this concept is open to attack on a number of independent constitutional grounds.

Thus, the term "abridging the freedom of speech" in the First Amendment (made applicable to the states by the Fourteenth) includes not merely criminal penalization but also the deprivation of benefits that would otherwise be accorded. Or, at least in respect to the states, withholding of a benefit accorded to others in the same class may be adjudged a denial of equal protection of the laws, and hence a violation of the "mandates of equality and liberty that bind officials everywhere." *Nixon v. Condon*, 286 U. S. 73, 88. Or, in respect to both the Federal and State Governments, such withholding may be deemed violative of the substantive implications of the due process clauses of the Fifth and Fourteenth Amendments. (Cf. *Farrington v. Tokushige*, 273 U. S. 284, where this Court invalidated as violative of the Fifth Amendment a Hawaii statute which imposed excessive regulations upon foreign language schools for the purpose of discouraging their operation and attendance thereat.) Or the substantive aspects of due process can be used to achieve the same end in a somewhat different way; i.e., that use of tax-raised funds to purchase silence on issues of public importance constitutes the use of taxation for a non-public purpose (cf. *Loan Association v. Topeka*, 20 Wall. 655; *Cochran v. Louisiana State Board*, 281 U. S. 370) since, as we urge below, no public purpose is served by discouraging such expression. Finally, in respect at least to expression regarding matters affecting the Federal government (in-



volved herein since the California statutes include advocacy of the overthrow of the Federal government), such a withholding might be deemed an impairment of the "privileges and immunities" clause. (Cf. *Hague v. C. I. O.*, 307 U. S. 496, where it was held that freedom to use municipal streets and parks to discuss Federal issues was protected by the "privileges and immunities" clause.)

Any of these provisions, we suggest, may be used to reach the basic principle we urge, that the instrumentalities and benefits of government may not be used to discourage expression which the First Amendment protects from penalization. We concede that we have been unable to find any decision of this Court which specifically asserts this principle. We submit, nevertheless, that it is implicit in a number of decisions of the Court.

In *Fowler v. Rhode Island*, 345 U. S. 67, it was held that a State could not bar the use of parks for the delivery of sermons of an "unorthodox" nature by an unpopular religious group while permitting its use for the delivery of orthodox sermons by accepted religious groups. (See also *Kunz v. New York*, 340 U. S. 290.) It is true that the *Fowler* case involved freedom of religion rather than freedom of speech or press, but this Court has held that "The First Amendment gives freedom of mind the same security as freedom of conscience." *Thomas v. Collins*, 323 U. S. 516, 531. See also *Hague v. C. I. O.*, *supra*.

Perhaps closer in point is *Hannegan v. Esquire, Inc.*, 327 U. S. 146, wherein it was held that the Postmaster General could not deny to a publisher the benefits of low-cost second class mailing privileges merely because the former was of the opinion that the matter sought to be mailed did not contribute to the public good and the public

welfare. It is true, of course, that the decision was based upon statutory interpretation rather than constitutional law, but the Court's opinion states that "grave constitutional questions are immediately raised" if it be urged that "the second-class rate could be granted on condition that certain economic or political ideas not be disseminated." 327 U. S. at 156.

In *West Virginia State Board of Education v. Barnette*, *supra*, it was held that a State could not constitutionally condition the benefit of a free public school education upon the pupil's saluting the flag and reciting the Pledge of Allegiance. The constitutional considerations that preclude a State from purchasing a particular form of expression would seem equally to preclude it from purchasing a particular form of silence. Moreover, it is significant that the opinion in the *Barnette* case is couched exclusively in language of compulsion and coercion,<sup>1</sup> even though the only consequence under West Virginia law was forfeiture of the benefit of a free public school education. This, we suggest, is an implicit recognition that in the area of First Amendment expression there is no constitutional distinction between abridgment by application of the penal laws and discouragement through the withholding of benefits accorded to compliant members of the same class.

This concept finds clear support in a number of cases holding that rights secured by the First Amendment may not be subjected to any substantial tax. *Murdock v. Pennsylvania*, 319 U. S. 105 (religious expression); *Jones v. Opelika*, 319 U. S. 103 (adopting dissenting opinion in 316

<sup>1</sup> *E.g.* " \* \* \* no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion or force citizens to confess by word or act their faith therein." 319 U. S. at 642.

U. S. 584) (religious expression); *Grosjean v. American Press Co.*, 297 U. S. 233 (general newspaper). The unconstitutionality, for example, of a statute that imposed a substantial tax upon persons delivering sermons or making political speeches is hardly open to question. Even more certain it is that a discriminatory tax upon expression within the purview of the First Amendment is unconstitutional. A tax upon religious periodicals but not non-religious ones, or upon newspapers expressing political views but not upon those outside the political arena could hardly be sustained. Most certain of all is the unconstitutionality of a law taxing newspapers whose editorial viewpoint favors the Republican Party while imposing no tax or a lesser tax upon those favoring the Democratic Party.

There is, we submit, no basic difference between the imposition of a discriminatory tax upon First Amendment expression and the discriminatory denial of tax benefits for the exercise of a First Amendment right.

Suppose in the *Hannegan* case the act of Congress unequivocally stated that second class mailing privileges should be granted only to newspapers and magazines espousing the Republican Party view on political affairs or that it should be denied to publications opposing low tariffs, recognition of Communist China or an increase in postal rates. Can there be any doubt that the statute would be unconstitutional? Or suppose the California statutes granted a tax exemption for contributions made to the Republican Party but not for those made to the Democratic Party. Could anyone seriously defend their constitutionality?

The tax exemption accorded to veterans under California law antedated the requirement of a non-advocacy

oath. The basis for the exemption was the fact that the beneficiary served in the armed forces. California might have granted that benefit in a different form, *e.g.*, a veterans' bonus. If, having done that, it had imposed a tax measured by the amount of the bonus upon all veterans who advocated the overthrow of the government, the constitutionality or unconstitutionality of that tax would not be determined by considerations different from those applicable if the statute conditioned the grant of the bonus upon non-advocacy. Similarly, in the present case, if a separate statute were enacted imposing a tax upon all veterans engaged in the proscribed advocacy and measuring that tax by the amount of exemption received under the previous statute, the constitutionality of the taxing statute, we submit, would have to be determined by considerations no different from those applicable in the present case where the exemption is conditioned upon non-advocacy.

### **B. Favored and Disfavored Expression**

We submit that under the First Amendment only two classes of expression are recognized. The first is the general class of expression on matters of public interest which is not subject to direct governmental prohibition or restraint.<sup>2</sup> The second is the exceptional case where gov-

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<sup>2</sup> In saying that there is a class of expression that cannot be restrained *directly* by the government, we refer to measures *designed* to achieve restraint. Undoubtedly, expression that lies within the constitutional guarantee may be restrained as an incidental and unavoidable result of achieving other social objectives. In such cases, the legislative body and the reviewing courts must consider both the importance of the objective to be achieved and whether the restraint is necessary to its achievement. We note below (1) that some restraints on political advocacy have been upheld on the theory that they were incidental and necessary to the achievement of other ends and (2) that no such claim is or can be made here.

ernmental prohibition is permissible, either because the expression is by its very nature harmful (*Chaplinsky v. New Hampshire*, 315 U. S. 568; *Roth v. United States*, 354 U. S. 476) or because the circumstances in which it is uttered present a clear, immediate and otherwise unavoidable danger to an overriding communal interest (*Schenck v. United States*, 249 U. S. 47). There is no room in a democracy for what may be called disfavored or neither-land expression, expression that is neither permissible nor impermissible, expression that the government does not and may not forbid but which it frowns upon and seeks to discourage.

That governmental power may not be used to discourage expression upon which public authorities look with disfavor is clear from *Murdock v. Pennsylvania*, *supra*. There the Court said at pp. 115-116):

“Considerable emphasis is placed on the kind of literature which petitioners were distributing—its provocative, abusive, and ill-mannered character and the assault which it makes on our established churches and the cherished faiths of many of us. \* \* \* But those considerations are no justification for the license tax which the ordinance imposes. *Plainly a community may not suppress, or the state tax, the dissemination of views because they are unpopular, annoying or distasteful.* If that device were ever sanctioned, there would have been forged a ready instrument for the suppression of the faith which any minority cherishes but which does not happen to be in favor. That would be a complete repudiation of the philosophy of the Bill of Rights.” (Italics supplied.)

The restraint thus condemned was an exercise of the taxing power, as it is in the instant case. If, as the *Mur-*

*dock* case holds, the government may not impose a tax upon expression whose dissemination it would discourage, it may not achieve the same end by withholding from the disseminator tax benefits granted to all others in the same class. The difference lies purely in the form of the discouragement, not in its substance. The premise applicable in both cases is the same—that within the realm of expression protected against abridgement by the First Amendment there is no second class citizenship; all legally permissible expression must be allowed to stand equally before the law.

We recognize, of course, that both the Federal government and the States are constitutionally empowered to encourage the production of certain products by the grant of subsidies and bonuses and to discourage the production of others by granting benefits only to producers who undertake not to produce the product or to produce it only in limited quantities. This is so because the government may well find that the general welfare would be promoted by increased production of certain products and curtailed production of others. Indeed, as the various conservation statutes attest, the government may curtail production without use of any incentives. *Bayside Fish Flour Co. v. Gentry*, 297 U. S. 422; *Geer v. Connecticut*, 161 U. S. 519.

The First Amendment rests on a directly contrary premise, the premise that the general welfare is promoted by uncurtailed expression on issues of public importance and, conversely, that the general welfare is prejudiced by curtailment of such expression.<sup>3</sup> Even expression advocating

<sup>3</sup> The only exception is the class of verbal blows, "the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace." *Chaplinsky v. New Hampshire*, 315 U. S. 568, 572; *Roth v. United States*, 354 U. S. 476. These



the overthrow of the government may serve the general welfare. As Mr. Justice Frankfurter stated in his concurring opinion in *Dennis v. United States* (341 U. S. 494, 549) :

“ \* \* \* A public interest is not wanting in granting freedom to speak their minds even to those who advocate the overthrow of the Government by force. For \* \* \* coupled with such advocacy is criticism of defects in our society. Criticism is the spur to reform; and Burke's admonition that a healthy society must reform in order to conserve has not lost its force. \* \* \* It is a commonplace that there may be a grain of truth in the most uncouth doctrine, however false and repellent the balance may be. \* \* \* ”

The reason government may in limited circumstances seek to prevent advocacy of overthrow by penalizing it is that the public welfare served by the “criticism of defects in our society” is outweighed by the overriding necessity to ward off a grave injury to the commonwealth. It is only in the rarest circumstances, however, that this necessity operates. Where it does not, the government may not penalize expression and, we submit, it is also prohibited from discouraging it by the half-way measure of purchasing a silence that may not be compelled.

The constitutional difference between expression on matters of public importance and the production of goods is well illustrated by a comparison of *Schneider v. Irvington*, 308 U. S. 147, and *Valentine v. Chrestensen*, 316 U. S. 52. In the former case the Court held that a municipality's interest in keeping its streets free of litter was not suffi-

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utterances may constitutionally be curtailed because they “are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.” (*Ibid.*)

ciently weighty to justify a ban on the street distribution of religious handbills. In the latter case it held that such an interest was sufficient to justify a ban on street distribution of commercial handbills. Here, too, we suggest that, while government may offer benefits to discourage the latter form of expression, it may not do so to discourage the former.

### **C. Rights and Privileges**

In this context, any purported distinction between rights and privileges has no significance. Tax exemption may be a privilege rather than a right, but the appellants herein have a right not to be arbitrarily denied a privilege granted to all other veterans in the same class. The constitutional issue, therefore, is not whether the exemption is a right or a privilege, but whether the classification and resultant denial are arbitrary.

Far more important, to speak here of tax exemption as a privilege or a bounty is completely to disregard the social interest in the veteran's expression on matters of public interest. It implies that the transaction is exclusively a private one between the State and the veteran and that the latter's speech or silence may be the subject of barter and sale between them. Whether or not this would be constitutionally permissible in respect to matters relating exclusively to the affairs of the State of California, it is no more permissible in respect to matters affecting the Federal government than would be barter and sale of the veteran's right to vote in a Federal election, or a statute conditioning a veteran's tax exemption benefit on his voting only for Republican and Democratic candidates for Federal office.

## II. Advocacy of overthrow may not constitutionally be prohibited in the absence of an incitement to concrete action.

If the principle proposed in this brief—that lawful expression may not be discouraged by the withholding of a benefit granted to others in the same class—is accepted by the Court, reversal of the decisions of the Supreme Court of California is required. *Yates v. United States*, 354 U. S. 298, held that a blanket prohibition of all advocacy is not within the penal scope of the Smith Act. While this decision was expressed in terms of statutory interpretation rather than constitutional law, the Court's opinion indicates quite clearly that the interpretation was necessitated by constitutional considerations. In holding that Congress did not outlaw advocacy as an abstract doctrine, the Court referred to the "constitutional danger zone" that would be involved were a contrary interpretation reached (354 U. S. at 319). Moreover, the Court relied upon a number of decisions that drew a sharp line between such advocacy and advocacy directed at promoting unlawful action (354 U. S. at 318). All the decisions cited by the Court—*Fox v. State of Washington*, 236 U. S. 273; *Schenck v. United States*, 249 U. S. 47 and *Gillow v. New York*, 268 U. S. 652—were cases of constitutional law rather than statutory interpretation. Particularly significant is the Court's quotation (at pp. 318-319) of the following from the *Gillow* case:

"The statute does not penalize the utterance or publication of abstract 'doctrine' or academic discussion having no quality of incitement to any concrete action. \* \* \* It is not the abstract 'doctrine' of overthrowing organized government by unlawful means which is denounced by the statute, but the advocacy of

action for the accomplishment of that purpose. \* \* \* This [Manifesto] \* \* \* is [in] the language of direct incitement. \* \* \* That the jury were warranted in finding that the Manifesto advocated not merely the abstract doctrine of overthrowing organized government by force, violence and unlawful means, but action to that end, is clear. \* \* \* That utterances inciting to the overthrow of organized government by unlawful means, present a sufficient danger of substantive evil to bring their punishment within the range of legislative discretion, is clear."

We respectfully urge that the Court now make explicit what was implicit in the *Yates* case: that mere advocacy of the overthrow of government by force or unlawful means "having no quality of incitement to any concrete action" cannot constitutionally be made criminal. If that premise is accepted—as we submit it must in view of the decisions cited and relied upon in the *Yates* case and the tenor of the Court's opinion—it follows that the advocacy involved in the present case cannot constitutionally be prohibited. The statute involved in the present case makes no distinctions between advocacy as an abstract doctrine and advocacy having the quality of incitement. It blankets all advocacy, including advocacy that cannot be made criminal.<sup>4</sup>

<sup>4</sup> It is important to note that the majority opinion in the California Supreme Court placed reliance upon *Dennis v. United States*, 341 U. S. 494. (*First Unitarian Church v. County of Los Angeles*, — Cal. 2d —, 311 P. 2d 508, 520-521). While one dissenting opinion laid considerable stress upon the difference between "a call to action" and "mere theoretical prophecy," and asserted that "it is unconstitutional to restrain plaintiff from advocating overthrow of the government" where the language is not "reasonably and ordinarily calculated to incite persons to such action" (*Id.* at pp. 524, 525), the majority opinion refused to recognize such a distinction and held that "the prohibited advocacy is penal in nature" and could constitutionally be made so (*Id.* at p. 521).

We recognize that this Court has upheld legislation having the effect of restraining advocacy of forceful overthrow without a showing of incitement to concrete action in such cases as *American Communications Association v. Douds*, 339 U. S. 382, *Adler v. Board of Education*, 342 U. S. 485 and *Garner v. Los Angeles Board of Public Works*, 341 U. S. 716. The principle we urge, however, would not require reversal of these cases since the restraints were there upheld as incidental and unavoidable results of the attainment of other societal ends.<sup>5</sup> In none of these cases was it asserted that a benefit could be granted or withheld by government *for the purpose* of discouraging expression or association that was not and could not be made criminal. The most that can be said of these cases was that they held that a course of procedure adopted by government reasonably designed to effect an end within its constitutional competence was not rendered unconstitutional merely because an incidental consequence was to discourage certain expressions or associations.<sup>6</sup>

In *American Communications Association v. Douds*, *supra*, the Court upheld the "non-Communist" oath provision of the Labor Management Relations Act because it held that Congress could reasonably find that Communists are likely to foment political strikes and political strikes constitute obstructions to the free flow of commerce, the

<sup>5</sup> We express no opinion on whether these cases should not be re-examined and reconsidered. We suggest only that adoption of the principle urged in this brief does not require such reexamination and reconsideration.

<sup>6</sup> Cf. *People ex rel. Everson v. Board of Education*, 330 U. S. 1, where it was held that a state program to protect children from traffic hazards by financing their transportation to schools was not rendered unconstitutional merely because an incidental consequence was that parochial schools were benefited.

removal of which is a proper governmental function. The Court, in relying on *United Public Workers v. Mitchell*, 330 U. S. 75, expressly stated that the decision in that case "was not put upon the ground that government employment is a privilege to be conferred or withheld at will" (at p. 405). The basis for the decision was that the incidental restriction on freedom of speech and association resulting from the use of reasonable means to achieve an objective within the competence of Congress did not invalidate the statute.

*United Public Workers v. Mitchell*, *supra*, and *Oklahoma v. United States Civil Service Commission*, 330 U. S. 127, obviously did not present cases of the withholding of a benefit in order to discourage conduct which the government generally looked on with disfavor, for the benefit (employment by the Federal government or payment of State employees' salaries partly out of Federal funds) was conditioned upon the recipients' withdrawal from conventional and accepted political activities. The purpose of the statute in both cases was the legitimate one of securing a civil service free of partisan politics. The fact that as an incidental by-product, engagement in politics would be discouraged on the part of some who preferred to work in civil service was held insufficient to invalidate the statute.

*Garner v. Board of Public Works* and *Adler v. Board of Education*, *supra*, held simply that "a municipal employer is not disabled because it is an agency of the State from inquiring of its employees as to matters that may prove relevant to their fitness and suitability." 341 U. S. at 720, 342 U. S. at 492. In passing upon the qualifications of employees and prospective employees, Federal, State and municipal officials obviously must have a wide area of discretion. Whether or not the *Garner* and *Adler* cases



were correctly decided, and whether or not they should now be reconsidered in these calmer times, it remains true that they held no more than that the incidental discouragement of certain expression and association as a by-product of the government's fixing the qualifications of its employees does not deprive government of the power reasonably to fix such qualifications. The purpose was not to deter expression but to ensure efficient government service.

Here, the sole purpose is to deter. We are not involved with government employees or would-be employees or with labor union representatives whose activities affect the free flow of commerce. We are concerned with those who do or do not engage in a particular form of advocacy. The sole purpose of the State's action is to discourage that advocacy. No more than this is claimed by the court below. It upheld the amendment and statute on the ground that the State could defend itself against advocacy of violent overthrow "by placing in a favored economic position . . . those particular persons and groups of individuals who are capable of formulating policies relating to good morals and respect for the law" (341 P. 2d at 520). The only other State interest mentioned by the court is that of protecting the State revenues against "impairment" or "exploitation" by those who would use unlawful means to destroy the State (*Id.* at 513-14, 519). But this is merely another way of saying the same thing, that the State intends to deny to those who engage in the disfavored expression a benefit that others may have. The amendment and statute simply determine whether veterans shall pay a greater or lesser tax. This is purely a matter of money, exactly as a fine for committing a prohibited act involves purely a matter of money.

In short, all that is involved here is the depriving of a person of a sum of money as a consequence of (realistically, as a punishment for) his engaging in conduct which the State desires to deter. The State's action here is a direct restraint on expression and has no other purpose. As such, it can be justified only if the expression is of a kind that the State may constitutionally suppress. We respectfully submit that, under the doctrine of the *Dennis* and *Yates* cases, *supra*, the expression here sought to be curbed is not in that category. The restraint is therefore unconstitutional.

### Conclusion

The California statute under examination here represents a dangerous experiment in American liberties. It seeks to establish a new class of expression—expression that is not prohibited and yet not permitted. It seeks to use the taxing power not for the legitimate purpose of raising revenue but to discourage expression which the First Amendment does not allow government to prohibit. The majestic purpose of the First Amendment cannot be so easily frustrated.

Respectfully submitted,

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FILED  
JUL 25  
JOHN T. FLY, Clerk

# In the Supreme Court

OF THE  
**United States**

OCTOBER TERM, 1957

**Nos. 483, 484**

LAWRENCE SPEISER,

*Appellant,*

vs.

JUSTIN A. RANDALL, as Assessor of Contra  
Costa County, State of California,

*Appellee.*

No. 483

DANIEL PRINCE,

*Appellant,*

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a Municipal Corporation,

*Appellee.*

No. 484

Appeal from the Supreme Court of the State of California.

## APPELLEES' PETITION FOR A REHEARING.

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*Appellee.*

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Appeal from the Supreme Court of the State of California.

## APPELLEES' PETITION FOR A REHEARING.

Justin A. Randall, as Assessor of Contra Costa County, State of California, and the City and County of San Francisco, a municipal corporation, present this petition for a rehearing and, in support thereof, respectfully show:



## I.

**THE MAJORITY OPINION INADVERTENTLY MISCONSTRUES  
THE EFFECT OF THE DECLARATION OF NONADVOCACY.**

The opinion of the Court treats the declaration of non-advocacy as merely "part of the probative process by which the State seeks to determine which taxpayers fall into the proscribed category". In these consolidated cases it is respectfully submitted that this assumption is not correct.

In the first place, in both the *Speiser* and *Prince* cases stipulations in the trial courts establish that each assessor denied the tax exemption "upon the sole ground" that the applications for veterans' property tax exemption did not contain the required declaration. (R. 20, para. 10 of stipulation, R. 48, para. 12.) In the *Speiser* case it was also further stipulated that the "applications disclosed that plaintiff was entitled to the property tax exemption afforded him as a veteran . . ." (R. 19, para. 8 of stipulation.)

Further, in the *Prince* case the record establishes that for the two years previous to the year in controversy Prince had applied for and been granted the veteran's exemption. (R. 46, para. 6 of stipulation.) Section 252 of the Revenue and Taxation Code of the State of California establishes that in a subsequent claim for a veteran's exemption filing of the affidavit by itself is sufficient without the requirement of other proof.<sup>1</sup>

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<sup>1</sup>California Revenue and Taxation Code §252:

"§252. When making the first claim any person claiming the veterans' exemption or the spouse of such person

The stipulations and statutory provisions discussed above make it clear that no other proof beside the affidavit was to be required of the veterans in the present cases. The reliance by the majority opinion on the fact that other proof would be required of these veterans is hence unjustified. The hypothesis of the Court that further proceedings would be undertaken by the assessors in these cases hence concerns a set of facts which are not presented by the record and which nowise are involved in the present controversy. It would seem inappropriate that the validity of such further proceedings be reviewed when they have never been undertaken and when their nature, scope and extent have not been the subject of review by any California court.

Cf. *United States v. Petrillo*, 332 U.S. 1, 11-12.

Hence, without knowing whether other procedures than the declarations involved in these cases would be required of the veterans involved, this Court has held the oath requirement inapplicable merely on the basis of such other procedures. Such determination of a constitutional question without any record or supporting facts is far beyond the usual scope of constitutional adjudication undertaken by this Court.

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shall appear before the assessor, shall give all information required and answer all questions in an affidavit, and shall subscribe and swear to the affidavit before the assessor. The assessor may require other proof of the facts stated before allowing the exemption. In subsequent years the person claiming the veterans' exemption, or the spouse of such person, may file the affidavit by mail on such forms as the assessor shall require."

See particularly:

*Walters v. St. Louis*, 347 U.S. 231, 232-233 (no review as to hypothetical applications of state tax law);

Also see:

*Alabama State Federation of Labor v. McAdory*, 325 U.S. 450;

*United Public Workers v. Mitchell*, 330 U.S. 75.

The opinion of this Court is also unusual in that it gives no weight whatsoever to the probability that the State of California will utilize a fair procedure in any determination as to qualification for tax exemption (if any such further proceeding were required). When the Court states that "it is clear that the declaration may be accepted or rejected on the basis of incompetent information or no information at all", it does a grave injustice to the status of jural and administrative adjudication in the State of California and ignores the full review of administrative determinations available in California courts, generally and in tax cases. To assume error in State proceedings in advance of the inception of any such proceedings is also contrary to the prior case law of this Court.

Cf. *Garner v. Board of Public Works of Los Angeles*, 341 U.S. 716, 723-724.

## II.

**THE OPINION OF THE COURT IMPROPERLY IMPORTS STANDARDS APPLICABLE IN CRIMINAL PROSECUTIONS TO QUALIFICATION FOR CIVIL TAX BENEFITS UNDER STATE LAW.**

It should first be observed that appellees, despite the statement of the majority opinion, did not and do not now contend that a privilege can be withheld on any condition, whether constitutional or unconstitutional. (Appellees' Consolidated Brief, page 31.) Such contention was not made either before the California Supreme Court or before this Court.

The nub of the matter is rather whether the State can impose conditions of qualification for civil tax benefits which are not given to citizens as a whole, particularly in regard to a benefit prompted by and given for reasons of patriotism and narrowly conditioned within itself to the end that nonadvocacy of violent overthrow be a prerequisite for such benefit. Qualification for such benefit is by oath or even by affirmation and, outside of the declaration itself, which is merely part of the general return required for a claim of tax exemption, no special procedures are required beyond those which are necessary to substantiate any claim of tax exemption. To confound administrative qualification for tax exemption in the manner customarily sanctioned under state law with the imposition of a criminal penalty for criminal conduct will have two evil results.

In the first place, well-developed state tax procedures for claiming of exemptions by the affirmative

action of the taxpayer are rendered inapplicable. In such proceedings it is well established that the general burden is on the taxpayer who claims a tax exemption.

See:

*Chesney v. Byram*, 15 Cal. 2d 460, 101 P. 2d 1106.

No good reason appears why a taxpayer cannot and should not include a declaration of nonadvocacy along with the affirmative statement already required under state law for a claim of tax exemption.

In the second place and still more basic is the observation that "an affirmation of minimal loyalty to the Government," which is all that is provided by the declaration in question, is not so irrelevant to the award of a subsidy to patriotism that it can be held to be unreasonable state action, particularly when limited to that speech which is beyond constitutional protection.

See:

*American Communications Association v. Douds*, 339 U.S. 382, 415.

Particularly is such a holding inappropriate when little or no weight has been given to the state determination as to the state purposes which motivate the grant of the tax exemption in question, particularly the intendment that the benefit be given as a reward for and incentive to patriotism.

Cf. *Hughes v. Superior Court of California*, 339 U.S. 460.

The holding that a state cannot impose a burden of proof on a taxpayer claiming exemption from general tax laws proceeds from the misconception that criminal standards of proof should apply and that such standards are inflexible. In the first place, there is no reason merely because certain conduct may also constitute a crime or because standards similar to criminal standards may be imported into state fiscal administration to hold that all the rules of criminal law including those regarding burden of proof and proof beyond reasonable doubt apply to civil or merely administrative proceedings. This Court has held in the past, without hesitation, that criminal punishment is not imposed by an oath more sweeping than the declaration at bar, which imposed standards of qualification and eligibility for all public employment.

See:

*Garner v. Board of Public Works of Los Angeles, supra*, 341 U.S. at 722.

Moreover, this Court has clearly held that "Civil procedure is incompatible with the accepted rules and constitutional guaranties governing the trial of criminal prosecutions, and where civil procedure is prescribed for the enforcement of remedial sanctions, those rules and guaranties do not apply".

*Helvering v. Mitchell*, 303 U.S. 391, 402, 403 (enumerating guaranties which are inapplicable, including burden of proof beyond a reasonable doubt).



More stringent standards ought not to be imposed on the states than are prescribed by the Federal Government for itself, particularly in a field reserved to the states for state action.

See:

*Beauharnais v. Illinois*, 343 U.S. 250.

In the second place, in the field of speech and likewise in the equally sensitive field of determination of the burden of proof in criminal prosecutions, this Court has directly held that states have the power to shift and alter the burden of proof.

See:

*Beauharnais v. Illinois*, *supra*, 343 U.S. at 265;  
*Leland v. Oregon*, 343 U.S. 790, 798-799, distinguishing *Tot v. United States*, 319 U.S. 463.

From the above cases it is apparent that under the latitude given to a state for determination of its procedures, the procedure selected must "violate . . . generally accepted concepts of basic standards of justice" before it will be held invalid.

See:

*Leland v. Oregon*, *supra*, 343 U.S. at 799.

The requirement of a simple statement from a claimant for tax exemption certainly does not violate such standards.

Finally, it is equally inappropriate to hold that there is an attempt to regulate speech in this case different from those involved in *Garner v. Board of Public Works*, *supra*, *American Communications As-*

*sociation v. Douds, supra*; and *Gerende v. Board of Supervisors*, 341 U.S. 56. The inhibitions on advocacy of forcible overthrow in those cases were just as stringent, if not more so, and had exactly the same effect on speech as the standard prescribed in this case. There is no such basic difference between the broad classes of holders of public office and public employees and recipients of special tax benefits as stated in the majority opinion. In each case the question of public interest arises as to whether the particular purposes of a state are served by payment of the compensation or subsidy in question. In view of the fact that the problem of proof under the oaths in the cited cases is no different from that under the declaration in the case at bar, no basis can be perceived for the distinction made by this Court.

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### III.

#### **DIFFICULT QUESTIONS ARE RAISED AND ARE LEFT UNSOLVED BY THE MAJORITY OPINION.**

The opinion does not give a satisfactory answer on the question as to whether a declaration by oath or affirmation can be utilized at all, alone or in connection with a proceeding which may be found proper by this Court. Neither does the opinion consider whether information can be secured from the taxpayer which will assist the state in determining whether the mandate of the constitutional provision is being complied with as the condition for the grant of the tax exemption.

Furthermore, grave questions are raised as to the validity and the manner of enforcement of the constitutional provision. In view of pending and accumulating tax liabilities and the possible necessity for legislative action, these uncertainties produce unsatisfactory situations. Particularly is this true since the same constitutional provision governs the form of oath or affirmation utilized for public officers and employees in the State of California.

Cf. *Pockman v. Leonard*, 39 Cal. 2d 676, 249 P. 2d 267, appeal dismissed for want of a substantial federal question, 345 U.S. 962.

Since this controversy cannot be regarded as solved or completely adjudicated without answers to these questions, there is definite need for further clarification.

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#### CONCLUSION.

The determination made by the majority opinion concerns proceedings by the assessors which have not been taken and which under the statutes and trial stipulations involved will not be taken in these cases. In doing so, it anticipates issues which were never before the state courts. The majority opinion applies inapplicable criminal concepts as to burden of proof. The majority opinion gives no weight to the determination of state policy of the purposes of tax exemption made by the people of California and considered by the State Supreme Court—that a tax exemption devoted to patriotism be conditioned so that

the granting of same be consistent with the high purpose for which it is given.

Furthermore, under the constitutional provision, further issues exist, which were presented to this Court and the solution of which is necessary for the final determination of the controversy and sound administration of the fiscal laws of the State of California.

It is respectfully urged that a rehearing should be granted to effect a complete and correct determination of the issues of these cases.

Dated, San Francisco, California,  
July 23, 1958.

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**CERTIFICATE OF COUNSEL**

I, Dion R. Holm, counsel for the above named petitioners, do hereby certify that the foregoing petition for rehearing of these causes is presented in good faith and not for delay.

Dated, San Francisco, California,

July 23, 1958.

DION R. HOLM.